



## TOWN OF TYNGSBOROUGH

Office of the Selectmen

25 Bryant Lane

Tyngsborough, MA 01879

Tel: 978 649-2300 Ext. 100 Fax: 978 649-2320

Board of Selectmen Meeting Minutes

Approved

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Monday August 2, 2010

6:00 P.M.

Town Offices

Members Present: Selectman Robert Jackson, Selectman Rich Lemoine, Selectwoman Elizabeth Coughlin, Selectwoman Ashley O'Neill, and Selectman Rick Reault.

Staff present: Town Administrator Michael Gilleberto and Admin Assistant Therese Gay

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1. 6:00 P.M. Open Meeting

Chairman O'Neill called the meeting to order, the Board was introduced and the agenda was read.

2. Emergency Management

The Emergency Management Director and the Assistant Director will meet with the Police Chief and Fire Chief, of the Emergency Preparedness, for recommendations before appointing the Director and Assistant. This would be beneficial as it would also give some overview of where the Emergency Preparedness is going.

3. Review of Agenda/Meeting Notice Format

The Board discussed the meeting notice format. Some revisions include a spot for New & Old Business in place of other business. Correspondence will be posted on line, a spot for Committee Reports has been added, the Selectmen's reports followed by the Town Administrator's report (to be posted on line) and Executive Session. Spontaneity can bring forth as long as Chair does not know 48 hours ahead, the Board has a large latitude to discuss items not on the agenda.

4. Citizen/Business Time

There were no citizens or businesses come forward this evening.

5. 7:00 P.M. Historical Commission – Town Center

The Historical Commission was present this evening to do their presentation of their vision of the historic town center. Chairman Warren Allgrove gave an overview of the commission's accomplishments since 2000. Ms. Joy Richardson and Ms. Jill Bowen spoke on the old town hall building and gave its history. Ms. Karen Farrow Denommee spoke on the Adams Barn that was part of the Shurfine store building, razed in 2009. The Barn was saved from demolition. Mr. Rob Kydd spoke on the Littlefield Library the building is already occupied by the Historical Commission and is being kept up with town funds. Mr. George Dupras spoke on the falls and the presented the garden plan that has been in existence since 1995. Mr. Guy Denommee spoke on the Winslow School and how it could be transformed into a Senior Center. Mr. Allgrove wrapped up the session by commenting that the sidewalks are already up Kendall Road and can have it extended to continue the loop from Kendall, Bryant and Middlesex Road. Some question on maintenance and procurement, the Highway Department could maintain and will need legal opinion of using private funds for public buildings. And who will maintain the utilities? Donation and fund raising were two thoughts and as for the

Winslow the Recreation Dept and the Council on Aging monies from their budget but will it be enough?

Selectman Jackson thanked the commission for coming in and doing the presentation, however he has a few questions on how much it will cost and would like to see a cost analysis done on the revenue stream, will be done through corporate donations, how to maintain, do we need an engineering analysis, a structural analysis? And how does this differ from what has been done in the past?

Mr. Allgrove countered with the CPC's committing the money to the old town hall and the fees will help defray the costs. The Barn will ask the Voke School Students to become involved and the Park will be done through donations. The Littlefield Library through town funds and the Winslow bldg would have to come from Wynnbrook's portion of their senior center monies. The Winslow bldg. is large enough to house both the senior and recreation centers. And the sidewalk will use town funds and the Highway Dept. to maintain. The Winslow tennis court will be used as a community garden.

Selectman Lemoine can see the passion in everyone and being on the EDC he will make comments after. Selectwoman Coughlin asked what is being preserved since the commission is using CPC funds. Selectman Reault has no comments he is totally in favor of the project. Selectwoman O'Neill has seen many options and has heard some great ideas but how will it get done? Selectman Lemoine the commitment of the 12000 residents in Tynsborough is unique and many want to work together with the EDC on how to generate monies and take care of the old buildings. Should have a member of the Historical Commission serve on the EDC and look at designating the whole area a historical significance. Selectman Reault thanked Beverly of NMCOG for coming tonight, the barn will be renovated; the old town hall will be renovated the Littlefield Library is all set.

The Board voted unanimously on a motion by Selectman Reault to write a letter to the Wynnbrook developer to see if they will help to renovate the Winslow and to explore options to use Wynnbrook project funds for their senior center to build the senior center at the Winslow bldg. Selectman Lemoine mentioned that Wynnbrook has been talking with Senior's council for the new center.

The Board voted unanimously on a motion by Selectwoman Coughlin to refer the conceptual plan to NMCOG to review to see how it fits the overlay and bridge the two town center plans.

#### 6. Other Business

The Board received a letter from Town Counsel saying that the Board of Selectmen can sponsor a candidate night at the High School Auditorium for the candidates running for office in the September primaries. The candidates cannot campaign, or solicit monies. The candidates would be able to meet the citizens and the citizens in turn could ask questions of the candidates. Mr. Robb Kydd will moderate. The Board voted unanimously on a motion by Selectman Lemoine, second by Selectman Jackson to have the Selectmen host a candidate night on September 1 or 2, 2010. Selectman Lemoine will check for the candidates' availability.

#### 7. Correspondence

The Board voted unanimously on a motion by Selectman Reault, second by Selectman Jackson to accept the correspondence as read.

Selectwoman O'Neill asked that the letter from Westford Road Development be sent to Town Counsel for review. The Westford Road Development is donating the Potash Hill Kiln to the Historical Commission.

#### 8. Selectmen's Notes

- Selectwoman O'Neill – Strategic Financial Planning

The SFPC met last Thursday to discuss the Questions and Answers for their informational meeting on August 12<sup>th</sup> and September 7<sup>th</sup> to help inform the public about the debt exclusion

question on the September ballot. The SFPC will meet with the Board on August 30<sup>th</sup> for further discussions.

- Selectwoman Coughlin – Energy Environmental Affairs

The EEAC met last Thursday they discussed, the process of a feasibility assessment to install a wind generation facility, with NMCOG and Meridian Associates engineer. The EEAC will meet with the Planning Board on the 19<sup>th</sup>. On Sunday Selectwoman Coughlin participated in the installation of new officers at the American Legion. She also attended the Transportation Group of NMCOG, discussed a letter of support for the Route 3 Exit 36 ramp access to the Pheasant Lane Mall NMCOG is working with the NH Regional Agencies. There was some discussions on the realignment of the Pawtucket Blvd and the remedy in razing the abandoned building of Frost Road.

- Selectman Reault – NMCOG

Selectman Reault attended the NMCOG meeting last week during discussions found that there is money available for the extension of the river walk way from Lowell to Tyngsborough. NMCOG and the Town are working on updating the Affordable Housing Plan and the Housing Plan. They are formulating new regulations to assist in combining the two reports into one. A suggestion that we may need a 40B committee to work with the Selectmen and the ZBA. The Board would like to see a draft and will place it on a future agenda for review.

- Selectman Lemoine – Economic Development

The EDC is working on the fencing and signage, and RFP for the code analysis. Putting together an RFP for private funds needs lots of work and the EDC is working with NMCOG on the overlay and guide lines.

- Selectman Jackson – TECC

The TECC committee has not yet met. The School Committee is waiting for a few more members.

#### 9. Town Administrator's Notes

The Town Administrator has no report this evening.

#### 10. Executive Session to discuss strategy with respect to collective bargaining because holding an open meeting would have a detrimental effect on the bargaining position of the public body and the chair so declares on record beforehand.

The Board voted on a motion by Selectwoman Coughlin, second by Selectman Jackson to enter into Executive Session to discuss strategy with respect to collective bargaining, litigation, or exempt negotiations where an open meeting will have a detrimental effect on the subject matter, the Chair so declares and to exit executive session to return to open session only to adjourn. Roll Call Vote: Selectman Jackson, yes; Selectman Lemoine, yes; Selectwoman Coughlin, yes; Selectwoman O'Neill, yes; and Selectman Reault, yes. The Board entered into executive session at 9:45 P.M.

- Collective Bargaining
- Contract Negotiation
- Litigation

#### 11. Adjournment

The Board voted on a motion by Selectwoman O'Neill, second by Selectman Jackson to adjourn the meeting. The Board adjourned at 11:00 P.M.

Respectfully submitted

Therese Gay  
Admin Assistant

Approved on Monday, September 13, 2010



Therese Gay <tgay@tyngsboroughma.gov>

## Fwd: Selectmen's Generic Meeting Notice (Agenda)

Michael P. Gilleberto <mgilleberto@tyngsboroughma.gov>

Wed, Jul 28, 2010 at 4:21 PM

To: Ashley O'Neill <ashley.oneill08@gmail.com>, Ashley O'Neill <aoneill@tyngsboroughma.gov>, Elizabeth Coughlin <ecoughlin@tyngsboroughma.gov>, Elizabeth Coughlin <lizcoughlin2000@yahoo.com>, elizabeth\_coughlin <elizabeth\_coughlin@post.harvard.edu>, Rick Reault <rreault@tyngsboroughma.gov>, rick@nebees.com, Rich Lemoine <rlemoine@tyngsboroughma.gov>, Rich Lemoine <lemoine4@verizon.net>, Robert Jackson <rjackson@tyngsboroughma.gov>  
Cc: Therese Gay <tgay@tyngsboroughma.gov>

BoS:

Attached please find comment from Attorney Zaroulis regarding the format of the Selectmen's regular agenda. I will continue dialogue with Town Counsel regarding the requests for more information that he has outlined below.

I also received a call from the Office of the Attorney General today regarding the issue of citizen/business time, predicated on an inquiry that she received from a citizen. Her verbal explanation regarding citizen/business time was in agreement with Attorney Zaroulis' comments below.

Michael

----- Forwarded message -----

From: Charles J. Zaroulis <charles.zaroulis@verizon.net>  
Date: Wed, Jul 28, 2010 at 12:32 PM  
Subject: Selectmen's Generic Meeting Notice (Agenda)  
To: "Michael P. Gilleberto" <mgilleberto@tyngsboroughma.gov>

Dear Michael:

This is in response to your E-mail attaching the Selectmen's Generic Agenda.

M.G.L. c. 30A, § 18, reads:

... the following words shall have the following meaning ... "Post notice," to display conspicuously the written announcement of a meeting. ...

Section 20(b) ... Notice shall ... contain the date, time and place of such meeting and a listing of topics that the **chair reasonably anticipates will be discussed** at the meeting. ... (Emphasis added.)

A "topic" generally means a subject of discussion or conversation.

The Attorney General promulgated 940 CMR 29.00, Open Meeting Law Regulations; and under 29.03 with regard to meeting notices, states:

The list of topics shall have **sufficient specificity to reasonably advise the public of the issues** to be discussed at the meeting. (Emphasis added.)

I recommend that the meeting notice include the phrase: "The listing of matters are those reasonably anticipated by the Chair which may be discussed at the meeting. Not all items listed may in fact be discussed, and other items not listed may also be brought up for discussion to the extent permitted by law."

For reasons 3 (collective bargaining or litigation), 6 (real property), and 8 (employment and applicant interviews) of the open meeting exemptions, the Chair may move to go into executive session to discuss strategy with respect to collective bargaining (or litigation, realty matters, and employment applicants), and declare that an open meeting may have a detrimental effect on the bargaining (or negotiations) position of the body, and shall state that the Board will reconvene in open session. [Note well: Chair must separately declare that an open meeting may have a detrimental effect on the bargaining or negotiations position of the body.]

Also, I suggest that the Chair state the purpose of the executive session and list any subjects which may be revealed without compromising the purpose for which the executive session was called.

In oral conversation, you asked whether Item 2, "Citizen/Business Time" requires more detail. In my view, this item does not require more detail unless, before the hearing notice is prepared, the Chair has specific knowledge of the subject matter. I suggest, however, that the Board provide an explanation, for example: private citizens or business owners, without prior approval, may address the Board with the permission of the Chair on matters of interest to the public for no more than five (5) minutes.

Items 3, 4, 5, and 6 are not clear to me and should contain more specific information.

The Chair should be able to determine what old business is before the Board, what new business the Chair reasonably anticipates, what correspondence has been received and is to be discussed, what the various selectmen and committees are to report, what the Town Administrator has informed the Chair he wishes to discuss, what the Chair wishes the Town Administrator to discuss, etc.

As to Item 7, I do not understand 7B as to what type of negotiation; I assume it is under exemptions 6 and 8. Regarding 7A and 7B, my view is that the statute and CMR do not require greater specificity. See my remarks above.

Call me if further information is required and to discuss further.

Charles

Charles J. Zaroulis, Esq.  
40 Church Street, Suite 500  
Lowell, Massachusetts 01852-2686  
Tel: 978.458.4583  
Fax: 978.937.0950  
E-mail: [charles.zaroulis@verizon.net](mailto:charles.zaroulis@verizon.net)

----- Original Message -----

**From:** Michael P. Gilleberto  
**To:** Charles J. Zaroulis  
**Sent:** Thursday, July 22, 2010 6:17 PM  
**Subject:** Fwd: Selectmen's Generic Agenda

Charles-

Attached please find a template for the Selectmen's regular agenda. Could you please review and comment upon it in light of recent changes to the Open Meeting Law?

Thank you,

Michael

----- Forwarded message -----

**From:** Therese Gay <[tgay@tyngsboroughma.gov](mailto:tgay@tyngsboroughma.gov)>  
**Date:** Thu, Jul 22, 2010 at 4:10 PM  
**Subject:** Selectmen's Generic Agenda  
**To:** Michael Gilleberto <[mgilleberto@tyngsboroughma.gov](mailto:mgilleberto@tyngsboroughma.gov)>

NOTICE-- This message is for the designated recipient only and may contain confidential, privileged or proprietary information. If you have received it in error, please notify the sender immediately and delete the original and any copy or printout. Unintended recipients are prohibited from making any other use of this e-mail. Be advised that the Attorney General has ruled that communication by e-mail in the public domain is not confidential. In compliance with Federal Rules of Civil Procedure (FRCP) all email communication will be archived and retained for at least three years.

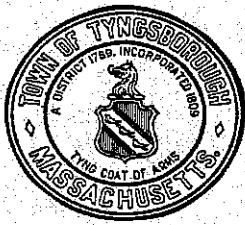
--  
Michael P. Gilleberto  
Town Administrator  
Town of Tyngsborough

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Michael P. Gilleberto  
Town Administrator  
Town of Tyngsborough

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## TOWN OF TYNGSBOROUGH

Office of the Selectmen  
25 Bryant Lane  
Tyngsborough, MA 01879

Tel: 978 649-2300 Ext. 100 Fax: 978 649-2320

### Board of Selectmen Meeting Agenda

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Monday August 2, 2010

6:00 P.M.

Town Offices

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1. 6:00 P.M. Open Meeting
2. Citizen Time
3. Other Business
4. Correspondence
5. Selectmen's Notes
6. Town Administrator's Notes
7. Executive
  - A. Collective Bargaining
  - B. Contract Negotiation
  - C. Litigation
8. Adjournment

#### Future Meetings

Selectmen's Meeting Monday, August 16, 2010 at 6:00 P.M. at Town Hall Offices



The Commonwealth of Massachusetts  
Office of the Attorney General  
One Ashburton Place  
Boston, Massachusetts 02108

**OPEN MEETING LAW COMPLAINT FORM**

**Instructions for completing the Open Meeting Law Complaint Form**

The Office of the Attorney General's Division of Open Government is responsible for interpreting and enforcing the Open Meeting Law. Pursuant to G.L. c. 30A, §23, the Open Meeting Law requires that, prior to filing a complaint with the Attorney General, complaints must first be filed with the public body that is alleged to have committed the violation. The complaint must be filed with the public body within 30 days of the alleged violation, or if the alleged Open Meeting Law violation could not reasonably have been known at the time it occurred, then within 30 days of the date it should reasonably have been discovered. The complaint must set forth the circumstances which constitute the alleged violation, giving the public body an opportunity to remedy the alleged violation.

Please complete the entire form, providing as much information as possible, to assist the public body in responding to your complaint. You may attach additional materials to your complaint if necessary. The public body may request additional information if necessary. The Division of Open Government will not, and public bodies are not required to, investigate anonymous complaints.

Complaints alleging a violation of the Open Meeting Law by a local public body must be filed with the clerk of the city or town where the alleged violation occurred. Complaints alleging a violation by a county, regional or state public body must be filed with the chair of the public body.

If you are not satisfied with the action taken by the public body in response to your complaint, you may file a copy of your complaint with the Attorney General 30 days after filing your complaint with the public body. The complaint must include this form and any documents relevant to the alleged violation. A complaint may be filed either by mail or by hand with the:

Office of the Attorney General  
Division of Open Government  
One Ashburton Place  
Boston, MA 02108

The Attorney General may decline to investigate a complaint that is filed with the Attorney General more than 90 days after the alleged OML violation, unless an extension was granted to the public body or the complainant demonstrates good cause for the delay.





## OPEN MEETING LAW COMPLAINT FORM

Office of the Attorney General  
One Ashburton Place  
Boston, MA 02108

Please note that all fields are required unless otherwise noted.

### Your Contact Information:

First Name: \_\_\_\_\_ Last Name: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Phone Number: \_\_\_\_\_ Ext. \_\_\_\_\_

Email: \_\_\_\_\_

Organization or Media Affiliation (if any): \_\_\_\_\_

Are you filing the complaint in your capacity as an individual, representative of an organization, or media?

(For statistical purposes only)

☐ Individual ☐ Organization ☐ Media

### Public Body that is the subject of this complaint:

☐ City/Town ☐ County ☐ Regional/District ☐ State

Name of Public Body (including city/  
town, county or region, if applicable): \_\_\_\_\_

Specific person(s), if any, you allege  
committed the violation: \_\_\_\_\_

Date of alleged violation: \_\_\_\_\_

## Description of alleged violation:

Describe the alleged violation that this complaint is about. If you believe the alleged violation was intentional, please say so and include the reasons supporting your belief.

Note: This text field has a maximum of 3000 characters.

What action do you want the public body to take in response to your complaint?

Note: This text field has a maximum of 500 characters.

## Review, sign, and submit your complaint

### Read this important notice and sign your complaint.

Under most circumstances your complaint will be considered a public record and be available to any member of the public upon request.

I understand that when I submit this complaint the Attorney General's Office cannot give me legal advice and cannot act as my personal lawyer.

I certify that the information contained on this form is true to the best of my knowledge.

Signed: \_\_\_\_\_

Date: \_\_\_\_\_



**CERTIFICATE OF RECEIPT OF OPEN MEETING LAW MATERIALS**

I, \_\_\_\_\_, who qualified for the office of  
(Name)

\_\_\_\_\_, on \_\_\_\_\_, certify pursuant  
(Office) (Date)

to G.L. c. 30A, § 20(g), that I have received copies of the following Open Meeting Law materials:

- 1) the Open Meeting Law, G.L. c. 30A, §§ 18-25;
- 2) regulations promulgated by the Attorney General under G.L. c. 30A, § 25; and
- 3) educational materials promulgated by the Attorney General under G.L. c. 30A, § 19(b), explaining the Open Meeting Law and its application.

I have read and understand the requirements of the Open Meeting Law and the consequences for violating it. I further understand that the materials I have received may be revised or updated from time to time, and that I have a continuing obligation to implement any changes in the Open Meeting Law during my term of office.

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Name of Public Body)

\_\_\_\_\_  
(Date)

*Pursuant to G.L. c. 30A, § 20(g), an executed copy of this certificate shall be retained, according to the relevant records retention schedule, by the appointing authority, city or town clerk, or the executive director or other appropriate administrator of a state or regional body, or their designee.*

## **940 CMR 29.00: OPEN MEETING LAW REGULATIONS**

- 29.01: Purpose, Scope and Other General Provisions
- 29.02: Definitions
- 29.03: Notice Posting Requirements
- 29.04: Alternative Notice Posting Methods
- 29.05: Complaints
- 29.06: Investigation
- 29.07: Resolution
- 29.08: Advisory Opinions
- 29.09: Other Enforcement Actions

### **29.01: Purpose, Scope and Other General Provisions**

- (1) Authority. The Attorney General promulgates 940 CMR 29.00, relating to the Open Meeting Law ("OML"), pursuant to G.L. c. 30A, § 25 (a) and (b).
- (2) Purpose. The purpose of 940 CMR 29.00 is to interpret, enforce and effectuate the purposes of the Open Meeting Law, G.L. c. 30A §§ 18-25.
- (3) Severability. If any provision of 940 CMR 29.00 or the application of such provision to any person, public body, or circumstances shall be held invalid, the validity of the remainder of 940 CMR 29.00 and the applicability of such provision to other persons, public bodies, or circumstances shall not be affected thereby.
- (4) Mailing. All complaints, notices (except meeting notices) and other materials that must be sent to another party shall be sent by one of the following means: first class mail, email, hand delivery, or by any other means at least as expeditious as first class mail.

### **29.02: Definitions**

As used in 940 CMR 29.00, the following terms shall, unless the context clearly requires otherwise, have the following meanings:

Commission means the Open Meeting Law Advisory Commission, as defined by G.L. c. 30A, § 19(c).

Emergency means a sudden, generally unexpected occurrence or set of circumstances demanding immediate action.

Intentional Violation means an act or omission by a public body, or a member of a public body, that knowingly violates the OML. Repeated conduct in violation of the OML will be considered evidence of an intentional violation where the body or member has previously been authoritatively advised that the conduct violates the OML.

MMA means the Massachusetts Municipal Association.

MNPA means the Massachusetts Newspaper Publishers Association.

OML means the Open Meeting Law, G.L. c. 30A, §§ 18-25.

Person means all individuals and entities, including governmental officials and employees.  
"Person" does not include public bodies.

Post notice means to place a written announcement of a meeting on a bulletin board, electronic display, website, cable television channel, newspaper or in a loose-leaf binder in a manner conspicuously visible to the public, including disabled persons, in accordance with 940 CMR 29.03.

Public body has the identical meaning as set forth in G.L. c. 30A, § 18, that is, a multiple-member board, commission, committee or subcommittee within the executive or legislative branch or within any county, district, city, region or town, however created, elected, appointed or otherwise constituted, established to serve a public purpose; provided, however, that the governing board of a local housing, redevelopment or similar authority shall be deemed a local public body; provided, further, that the governing board or body of any other authority established by the general court to serve a public purpose in the commonwealth or any part thereof shall be deemed a state public body; provided, further, that "public body" shall not include the general court or the committees or recess commissions thereof, bodies of the judicial branch or bodies appointed by a constitutional officer solely for the purpose of advising a constitutional officer and shall not include the board of bank incorporation or the policyholders protective board; and provided, further, that a subcommittee shall include any multiple-member body created to advise or make recommendations to a public body.

### **29.03: Notice Posting Requirements**

- (1) Requirements Applicable to Local, Regional, District, County, and State Public Bodies
  - (a) Except in an emergency, public bodies shall file meeting notices at least 48 hours in advance of a public meeting, excluding Saturdays, Sundays and legal holidays. In an emergency, the notice shall be posted as soon as reasonably possible prior to such meeting.
  - (b) Meeting notices shall be printed in a legible, easily understandable format and shall contain the date, time and place of such meeting and a listing of topics that the chair reasonably anticipates will be discussed at the meeting. The list of topics shall have sufficient specificity to reasonably advise the public of the issues to be discussed at the meeting.
- (2) Requirements Specific to Local Public Bodies

- (a) The municipal clerk, or other such person designated by the municipality, shall post notice of the meeting in a manner conspicuously visible to the public at all hours in or on the municipal building in which the clerk's office is located, and the date and time that the notice is posted shall be conspicuously recorded thereon. Such notice shall be accessible to the public in the municipal clerk's office. If such notice is not conspicuously visible to the public during hours when the clerk's office is closed, such notice shall also be made available through an alternative method prescribed or approved by the Attorney General under 940 CMR 29.04. A description of such alternative method, sufficient to allow members of the public to obtain notice through such method, shall be posted in a manner conspicuously visible to the public at all hours on or adjacent to the main and handicapped accessible entrances to the municipal building in which the clerk's office is located.
- (b) The municipal clerk shall file with the Attorney General written notice of the municipality's notice posting method and any change thereto. All public bodies in the municipality shall consistently use the municipality's most current notice posting method on file with the Attorney General.
- (3) Requirements Specific to Regional or District Public Bodies. Notice shall be filed and posted in each city and town within the region or district in the manner prescribed for or selected by local public bodies in that city or town.
- (4) Requirements Specific to Regional School Districts. The secretary of the regional school district committee shall be considered to be its clerk and shall file notice with the clerk of each city and town within such district and each such municipal clerk shall post the notice in the manner prescribed or selected by local public bodies in that city or town.
- (5) Requirements Specific to County Public Bodies. Notice shall be filed in the office of the county commissioners and a copy of the notice shall be publicly posted in a manner conspicuously visible to the public at all hours in such place or places as the county commissioners shall designate for this purpose. The public body shall file with the Attorney General written notice of the public body's notice posting method and any change thereto. The public body shall consistently use the most current notice posting method on file with the Attorney General.
- (6) Requirements Specific to State Public Bodies. Notice shall be posted on a website in accordance with procedures established by the Attorney General in consultation with the Information Technology Division of the Executive Office for Administration and Finance (EOAF) for the purpose of providing the public with effective notice. A copy of each notice shall also be sent to EOAF and to the Secretary of State's Regulations Division. The chair of each state public body shall notify the Attorney General in writing of its Internet notice posting location and any change thereto. The public body shall consistently use the most current notice posting method on file with the Attorney General.

#### **29.04: Alternative Notice Posting Methods**

For local public bodies, the Attorney General has determined that the following alternative methods will provide more effective notice to the public, provided that all meeting notices posted under an alternative method shall include the same content as required by section 29.03(1)(b) and shall also be available during hours when the clerk's office is open in the manner required by subsection 29.03(2)(a):

- (1) public bodies may post notice of meetings on the municipal website, **AND**, post notice or provide Internet access in an alternate municipal building (e.g., police or fire station) where the notice is accessible at all hours;
- (2) public bodies may post notice of meetings on cable television, **AND**, post notice or provide cable television access in an alternate municipal building (e.g., police or fire station) where the notice is accessible at all hours;
- (3) public bodies may post notice of meetings in a newspaper of general circulation in the municipality, **AND**, post notice or a copy of the newspaper containing the meeting notice at an alternate municipal building (e.g., police or fire station) where the notice is accessible at all hours;
- (4) public bodies may place a computer monitor or electronic or physical bulletin board displaying meeting notices on or in a door, window, or near the entrance of the municipal building in which the clerk's office is located in such a manner as to be visible to the public from outside the building, or;
- (5) public bodies may provide an audio recording of meeting notices, available to the public by telephone at all hours.

#### **29.05: Complaints**

- (1) All complaints shall be in writing, using the form approved by the Attorney General and available on the Attorney General's website. A public body need not, and the Attorney General will not, investigate or address anonymous complaints.
- (2) Public bodies, or the municipal clerk in the case of a local public body, should provide any person, on request, with an OML complaint form. If a paper copy is unavailable, then the public body should direct the requesting party to the Attorney General's website, where an electronic copy of the form will be available for downloading and printing.
- (3) For local public bodies, the complainant shall file the complaint with the municipal clerk. For all other public bodies, the complainant shall file the complaint with the chair of the relevant public body, or if there is no chair, then with the public body. The complaint shall be filed within 30 days of the alleged OML violation, or if the alleged OML

violation could not reasonably have been known at the time it occurred, then within 30 days of the date it should reasonably have been discovered.

- (4) The public body shall review timely complaints to ascertain the time, date, place and circumstances which constitute the alleged violation. If the public body needs additional information to resolve the complaint, then the chair may request it from the complainant within seven business days of receiving the complaint. The complainant shall respond within 10 business days after he or she receives the request. The public body will then have an additional 10 business days after receiving complainant's response to review the complaint and take any remedial action pursuant to 940 CMR 29.05(5).
- (5) Within 14 business days after receiving the complaint, unless an extension has been granted by the Attorney General as provided below, the public body shall review the complaint's allegations; take remedial action, if appropriate; and send to the Attorney General a copy of the complaint and a description of any remedial action taken. The public body shall simultaneously notify the complainant that it has sent such materials to the Attorney General and shall provide the complainant with a copy of the description of any remedial action taken.
  - (a) Any remedial action taken by the public body in response to a complaint under this section shall not be admissible as evidence that a violation occurred in any later administrative or judicial proceeding against the public body relating to the alleged violation.
  - (b) If the public body requires additional time to resolve the complaint, it may obtain an extension from the Attorney General by submitting a written request within 14 business days after receiving the complaint. The Attorney General will grant an extension if the request demonstrates good cause. Good cause will generally be found if, for example, the public body cannot meet within the 14 business day period to consider proposed remedial action. The Attorney General shall notify the complainant of any extension and the reason for it.
- (6) If at least 30 days have passed after the complaint was filed with the public body, and if the complainant is unsatisfied with the public body's resolution of the complaint, the complainant may file a copy of the original complaint with the Attorney General along with any other materials the complainant believes are relevant. The Attorney General may decline to investigate complaints filed with the Attorney General more than 90 days after the alleged OML violation, unless an extension was granted to the public body or the complainant demonstrates good cause for the delay.
- (7) The Attorney General shall acknowledge receipt of all complaints and will resolve them within a reasonable period of time, generally 90 days. If additional time is necessary to resolve a particular complaint, the Attorney General will notify the complainant and the public body.



- (8) If a complaint appears untimely, is not in the proper form, or is missing information, the Attorney General shall return the complaint to the complainant within 14 business days of its receipt, noting its deficiencies. The complainant shall then have 14 business days to correct the deficiencies and resubmit the complaint to the Attorney General. If the deficiencies are not corrected, no further action on the complaint will be taken by the Attorney General.

#### **29.06: Investigation**

Whenever the Attorney General has reasonable cause to believe that an OML violation has occurred that has not been adequately remedied, then the Attorney General may conduct an investigation.

- (1) The Attorney General shall notify the public body or person that is the subject of the investigation and any complainant within a reasonable period of time of the existence of the investigation and the nature of the alleged OML violation being investigated.
- (2) Upon notice of the investigation, the subject of the investigation shall provide the Attorney General with all information relevant to the investigation. The subject may also submit a memorandum or other writing to the Attorney General, addressing the allegations being investigated.

If the subject of the investigation fails to voluntarily provide the necessary or relevant information within 30 days of receiving notice of the investigation, the Attorney General may issue subpoenas to obtain the information in accordance with G.L. c. 30A, § 24, to:

- (a) Take testimony under oath;
- (b) Examine or cause to be examined any documentary material; or
- (c) Require attendance during such examination of documentary material by any person having knowledge of the documentary material and take testimony under oath or acknowledgment in respect of any such documentary material.

Any documentary material or other information produced by any person pursuant to this section shall not, unless otherwise ordered by a court of the Commonwealth for good cause shown, be disclosed without that person's consent by the Attorney General to any person other than the Attorney General's authorized agent or representative. However, the Attorney General may disclose the material in court pleadings or other papers filed in court; or, to the extent necessary, in an administrative hearing or other action taken to conduct or resolve the investigation pursuant to these regulations.

## **29.07: Resolution**

- (1) No Violation. If the Attorney General determines, after investigation, that the OML has not been violated, the Attorney General shall terminate the investigation and notify, in writing, the subject of the investigation and any complainant.
- (2) Violation Resolved Without Hearing. If the Attorney General determines after investigation that the OML has been violated, the Attorney General may resolve the investigation without a hearing. The Attorney General shall determine whether the relevant public body, one or more of its members, or both, were responsible, and whether the violation was intentional or unintentional. The Attorney General will notify, in writing, any complainant of the investigation's resolution. Upon finding a violation of the OML, the Attorney General may take one of the following actions:
  - (a) Informal action. The Attorney General may resolve the investigation with a telephone call or letter that explains the violation and clarifies the subject's obligations under the OML, providing the subject with a reasonable period of time to comply with any outstanding obligations.
  - (b) Formal order. The Attorney General may resolve the investigation with a formal order. The order may require:
    1. immediate and future compliance with the OML;
    2. attendance at a training session authorized by the Attorney General;
    3. that minutes, records or other materials be made public; or
    4. other appropriate action.

Orders shall be available on the Attorney General's website.

- (3) Violation Resolved After Hearing. The Attorney General may conduct a hearing where the Attorney General deems appropriate. The hearing shall be conducted pursuant to 801 CMR 1.00, et seq., as modified by any regulations issued by the Attorney General. At the conclusion of the hearing, the Attorney General shall determine whether an OML violation occurred, whether the public body, one or more of its members, or both, were responsible, and whether the violation was intentional or unintentional. The Attorney General will notify, in writing, any complainant of the investigation's resolution. Upon a finding that a violation occurred, the Attorney General may order:
  - (a) immediate and future compliance with the OML;
  - (b) attendance at a training session authorized by the Attorney General;
  - (c) nullification of any action taken at the relevant meeting, in whole or in part;
  - (d) imposition of a fine upon the public body of not more than \$1,000 for each intentional violation;

- (e) that an employee be reinstated without loss of compensation, seniority, tenure or other benefits;
- (f) that minutes, records or other materials be made public; or
- (g) other appropriate action.

Orders issued following a hearing shall be available on the Attorney General's website.

- (4) A public body or any member of a body aggrieved by any order issued by the Attorney General under this section may obtain judicial review of the order through an action in Superior Court seeking relief in the nature of certiorari. Any such action must be commenced in Superior Court within 21 days of receipt of the order.

#### **29.08: Advisory Opinions**

The Attorney General may issue advisory opinions on request or at his or her own initiative to provide guidance to public bodies and the public on changes in the OML, court decisions interpreting the OML, or other OML developments.

- (1) The Attorney General shall ordinarily make a draft advisory opinion available for comment on the Attorney General's website at least 60 days prior to the planned issuance of the opinion. Notice of the posting shall be provided to the MMA, the MNPA and the Commission.
- (2) Comments on the draft advisory opinion shall be submitted, in writing, to the Attorney General at least 30 days prior to the planned issuance of the opinion.
- (3) Action taken by a public body in good faith compliance with an advisory opinion, provided that the circumstances are not materially different, shall not constitute an intentional violation of the OML.

#### **29.09: Other Enforcement Actions**

Nothing in 940 CMR 29.06 or 29.07 shall limit the Attorney General's authority to file a civil action to enforce the OML pursuant to G.L. c. 30A, § 23(f).

# Open Meeting Law Guide



COMMONWEALTH OF MASSACHUSETTS  
OFFICE OF ATTORNEY GENERAL  
MARTHA COAKLEY

JULY 1, 2010

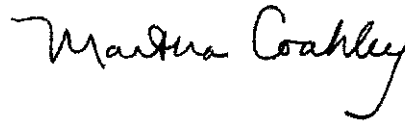
Dear Massachusetts Residents:

On July 1, 2010, the Attorney General's Office assumed responsibility for the enforcement of the Open Meeting Law (OML) from the state's District Attorneys. We believe that transferring all enforcement to one central statewide office will allow for greater consistency and will ensure that local officials have access to the information they need to comply with the law.

Our office is committed to ensuring that the changes to the Open Meeting Law will provide for greater transparency and clarity – both of which are hallmarks of good government. We are focused on providing educational materials, outreach and training sessions to ensure that all members of the public understand the law.

Whether you are a town clerk or town manager, a member of a public body, or an involved resident, I want to thank you for taking the time to understand the Open Meeting Law. We strive to be a resource to you, and encourage you to contact the Division of Open Government at (617) 963-2540 or visit our website at [www.mass.gov/ago/openmeeting](http://www.mass.gov/ago/openmeeting) for more information.

Cordially,

A handwritten signature in black ink that reads "Martha Coakley". The signature is fluid and cursive, with the first name "Martha" and last name "Coakley" clearly distinguishable.

Martha Coakley  
Massachusetts Attorney General

# Attorney General's Open Meeting Law Guide

## Overview

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### Purpose of the Law

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The purpose of the Open Meeting Law is to ensure transparency in the deliberations on which public policy is based. Because the democratic process depends on the public having knowledge about the considerations underlying governmental action, the Open Meeting Law requires, with some exceptions, that meetings of public bodies be open to the public. It also seeks to balance the public's interest in witnessing the deliberations of public officials with the government's need to manage its operations efficiently.

### AGO Authority

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The Open Meeting Law was revised as part of the 2009 Ethics Reform Bill, and now centralizes responsibility for statewide enforcement of the law in the Attorney General's Office (AGO). G.L. c. 30A, §19 (a). To help public bodies understand and comply with the revised law, the Attorney General has created the Division of Open Government. The Division of Open Government provides training, responds to inquiries, investigates complaints, and when necessary, makes findings and takes remedial action to address violations of the law. The purpose of this Guide is to inform elected and appointed members of public bodies, as well as the interested public, of the basic requirements of the law.

### Certification

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Within two weeks of qualification for office, all members of public bodies must complete the attached Certificate of Receipt of Open Meeting Law Materials certifying that they have received these materials, and that they understand the requirements of the Open Meeting Law and the consequences for violating it. The certification must be retained where the body maintains its official records. All public body members should familiarize themselves with the Open Meeting Law, Attorney General's regulations, and this Guide.

### Open Meeting Website

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This Guide is intended to be a clear and concise explanation of the Open Meeting Law's requirements. A more in-depth explanation of the law along with up-to-date regulations, training materials, advisory opinions and orders can be found on the Attorney General's Open Meeting website, <http://www.mass.gov/ago/openmeeting>.

Local and state government officials, members of public bodies and the public are encouraged to visit the website regularly for updates, as well as to view additional Open Meeting Law materials.

### **What meetings are covered by the Open Meeting Law?**

With certain exceptions, all meetings of a public body must be open to the public. A meeting is generally defined as "a deliberation by a public body with respect to any matter within the body's jurisdiction." As explained more fully below, a deliberation is a communication between or among members of a public body.

These four questions will help determine whether a communication constitutes a meeting subject to the law:

- 1) is the communication between members of a **public body**;
- 2) does the communication constitute a **deliberation**;
- 3) does the communication involve a matter within the body's **jurisdiction**; and
- 4) does the communication fall within an **exception** listed in the law?

### **What constitutes a public body?**

While there is no comprehensive list of public bodies, any multi-member board, commission, council, authority, committee or subcommittee within the Executive branch of state government, or within any county, district, city, region or town, which has been established to serve a public purpose, is subject to the law. The law includes any multi-member body created to advise or make recommendations to a public body, and also includes the board of any local housing or redevelopment authority, and the governing board or body of any authority established by the Legislature to serve a public purpose. The law excludes the Legislature and its committees, bodies of the judicial branch, and bodies appointed by a constitutional officer for the purpose of advising a constitutional officer.

Boards of selectmen and school committees are certainly subject to the Open Meeting Law, as are subcommittees of public bodies, regardless of whether their role is decision-making or advisory. Neither individual government officials, such as a mayor or police chief, nor members of their staffs, are "public bodies" subject to the law, and so they may meet with one another to discuss public business without needing to comply with Open Meeting Law requirements.

### **What constitutes a deliberation?**

The Open Meeting Law defines deliberation as "an oral or written communication through any medium, including electronic mail, between or among a quorum of a public body on any public business within its jurisdiction." Distributing a meeting agenda,

scheduling or procedural information, or reports or documents that may be discussed at the meeting will not constitute deliberation, so long as the material does not express the opinion of a member of the public body. E-mail exchanges between or among a quorum of members of a public body discussing matters within the body's jurisdiction may constitute deliberation, even where the sender of the email does not ask for a response from the recipients.

To be a deliberation, the communication must involve a quorum of the public body. A quorum is usually a majority of the members of a public body. Thus, a communication among less than a quorum of the members of a public body will not be a deliberation, unless there are multiple communications among the members of the public body that would together be a communication among a quorum of members. Courts have held that the Open Meeting Law applies when members of a public body communicate in a manner that seeks to evade the application of the law. Thus, in some circumstances, communications between two members of a public body, when taken together with other communications, may be a deliberation.

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#### What matters are within the **jurisdiction** of the public body?

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The Open Meeting Law applies only to the discussion of any "matter within the body's jurisdiction". The law does not specifically define "jurisdiction." But as a general rule, any matter of public business on which a quorum of the public body may make a decision or recommendation would be considered a matter within the jurisdiction of the public body.

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#### What are the **exceptions** to the definition of a meeting?

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There are five exceptions to the definition of a meeting under the Open Meeting Law.

1. Members of a public body may conduct an onsite inspection of a project or program; however, they cannot deliberate at such gatherings;
2. Members of a public body may attend a conference, training program or event; however, they cannot deliberate at such gatherings;
3. Members of a public body may attend a meeting of another public body provided that they communicate only by open participation; however, they cannot deliberate at such gatherings;
4. Meetings of quasi-judicial boards or commissions held solely to make decisions in an adjudicatory proceeding are not subject to the Open Meeting Law; and,
5. Town Meetings are not subject to the Open Meeting Law. See G.L. c. 39, § 9.

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#### What are the requirements for filing and posting meeting notices?

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Except in cases of emergency, a public body must provide the public with notice of its meeting 48 hours in advance, excluding Saturdays, Sundays and holidays. Notice of emergency



meetings must be posted as soon as reasonably possible prior to the meeting. Notices must be posted in a manner that is accessible to disabled persons to the extent required by federal and state law.

- For local public bodies, meeting notices must be filed and available to the public in the office of the municipal clerk. Notices may be posted on a bulletin board, in a loose-leaf binder or on any electronic display (e.g. television, computer monitor, or an electronic bulletin board), provided that the notice is conspicuously visible to the public at all hours in or on the municipal building in which the clerk's office is located. In the event that the meeting notices posted in the municipal building are not visible to the public at all hours, then the municipality must either post notices on the outside of the building or follow one of the alternative posting methods approved by the Attorney General.
- For regional or district public bodies and regional school districts, meeting notices must be filed and posted in the same manner required of local public bodies, in each of the communities within the region or district.
- County public bodies must file meeting notices in the office of the county commissioners and post notice of the meeting in a manner conspicuously visible to the public at all hours at a place or places designated by the county commissioners for notice postings.
- State public bodies must file meeting notices by posting the notice on a website in accordance with procedures that can be found on the Attorney General's Open Meeting Website, [www.mass.gov/ago/openmeeting](http://www.mass.gov/ago/openmeeting).

#### Alternate Posting Methods for Local Public Bodies

For local public bodies, the Attorney General has determined that the following alternative methods will provide more effective notice to the public, provided that all meeting notices posted under an alternative method shall include the same content as required by section 29.03(1)(b) and shall also be available during hours when the clerk's office is open in the manner required by subsection 29.03(2)(a):

- (1) public bodies may post notice of meetings on the municipal website, **AND**, post notice or provide Internet access in an alternate municipal building (e.g., police or fire station) where the notice is accessible at all hours;
- (2) public bodies may post notice of meetings on cable television, **AND**, post notice or provide cable television access in an alternate municipal building (e.g., police or fire station) where the notice is accessible at all hours;
- (3) public bodies may post notice of meetings in a newspaper of general circulation in the municipality, **AND**, post notice or a copy of the newspaper containing the meeting notice at an alternate municipal building (e.g., police or fire station) where the notice is accessible at all hours;

- (4) public bodies may place a computer monitor or electronic or physical bulletin board displaying meeting notices on or in a door, window, or near the entrance of the municipal building in which the clerk's office is located in such a manner as to be visible to the public from outside the building, or;
- (5) public bodies may provide an audio recording of meeting notices, available to the public by telephone at all hours.

The clerk of the municipality must inform the AGO of its notice posting method, and update the Division of any future change. All public bodies shall consistently use the most current notice posting method on file with the AGO.

#### What information must meeting notices contain?

Meeting notices must be posted in a legible, easily understandable format; contain the date, time and place of the meeting; and list the topics that, as of the time the notice is filed, the chair reasonably anticipates will be discussed at the meeting. The list of topics must be sufficiently specific to reasonably inform the public of the issues to be discussed at the meeting. While not required under the Open Meeting Law, public bodies are encouraged to make a revised list of topics to be discussed available to the public in advance of the meeting if the body intends to discuss topics that come up within the 48 hour period before the meeting.

#### When can a public body meet in executive session?

While all meetings of public bodies must be open to the public, certain topics may be discussed in executive, or closed, session. Before going into an executive session, the chair of the public body must:

- First convene in open session.
- State the reason for the executive session, stating all subjects that may be revealed without compromising the purpose for which the executive session was called.
- State whether the public body will reconvene at the end of the executive session.
- Take a roll call vote of the body to enter executive session.

While in executive session, the public body must keep accurate records and must take a roll call vote of all votes taken and may only discuss matters for which the executive session was called.

## The Ten Purposes for Executive Session

The law defines ten specific Purposes for which an executive session may be held, and emphasizes that these are the only purposes for which a public body may enter executive session.

The ten Purposes for which a public body may vote to hold an executive session are:

1. **To discuss the reputation, character, physical condition or mental health, rather than professional competence, of an individual, or to discuss the discipline or dismissal of, or complaints or charges brought against, a public officer, employee, staff member or individual. The individual to be discussed in such executive session shall be notified in writing by the public body at least 48 hours prior to the proposed executive session; provided, however, that notification may be waived upon written agreement of the parties.**

This Purpose is designed to protect the rights and reputation of individuals. Nevertheless, it appears at least that where a public body is discussing an employee evaluation, considering applicants for a position, or discussing the qualifications of any individual, these discussions should be held in open session to the extent that that the discussion deals with issues other than the reputation, character, health, or any complaints or charges against the individual. An executive session called for this Purpose triggers certain rights on the part of an individual who is the subject of the discussion. The individual's right to choose to have his or her dismissal considered at an open meeting takes precedence over the general right of the public body to go into executive session.

While the proposed imposition of disciplinary sanctions by a public body on an individual fits within this Purpose, this Purpose does not apply if, for example, the public body is deciding whether to lay off a large number of employees because of budgetary constraints.

2. **To conduct strategy sessions in preparation for negotiations with nonunion personnel or to conduct collective bargaining sessions or contract negotiations with nonunion personnel;**

**Collective Bargaining Sessions:** These include not only the bargaining sessions but also include grievance hearings that are called for under a collective bargaining agreement.

3. **To discuss strategy with respect to collective bargaining or litigation if an open meeting may have a detrimental effect on the bargaining or litigating position of the public body and the chair so declares;**

**Collective Bargaining Strategy:** Discussions with respect to collective bargaining strategy include discussions of proposals for wage and benefit packages or working

conditions for union employees. The public body, if challenged, carries the burden of proving that an open meeting might have a detrimental effect on its bargaining position to justify an executive session on the basis of this Purpose. The showing that must be made is that the open discussion may have a detrimental impact on the collective bargaining process; the body is not required to demonstrate or specify a definite harm that would have arisen. At the time that the executive session is proposed and voted on, the chair must state on the record that having the discussion in an open session may be detrimental to the public body's bargaining or litigating position.

**Litigation Strategy:** Discussions concerning strategy with respect to ongoing litigation obviously fit within this Purpose, but only if an open meeting may have a detrimental effect on the litigating position of the public body. Discussions relating to potential litigation are not covered by this exemption unless that litigation is clearly and imminently threatened or otherwise demonstrably likely. That a person is represented by counsel and supports a position adverse to the public body's does not by itself mean that litigation is imminently threatened or likely. Nor does the fact that a newspaper reports a party has threatened to sue necessarily mean imminent litigation.

**Note:** A public body's discussions with its counsel do not automatically fall under this or any other Purpose for holding an executive session.

4. **To discuss the deployment of security personnel or devices, or strategies with respect thereto;**
5. **To investigate charges of criminal misconduct or to consider the filing of criminal complaints;**

This Purpose permits an executive session to investigate charges of criminal misconduct and to consider the filing of criminal complaints. Thus it primarily involves discussions that would precede the formal criminal process in court. Purpose 1 is related, in that it permits an executive session to discuss certain complaints or charges, which may include criminal complaints or charges, but only those that have already been brought. Also, unlike Purpose 5, Purpose 1 confers certain rights of participation on the individual involved, as well as the right for the individual to insist that the discussion occur in open session. To the limited extent that there is overlap between Purposes 1 and 5, a public body has discretion to choose which Purpose to invoke when going into executive session.

6. **To consider the purchase, exchange, lease or value of real property if the chair declares that an open meeting may have a detrimental effect on the negotiating position of the public body;**

Under this Purpose, as with the collective bargaining and litigation Purpose, an executive session may only be held where an open meeting may have a detrimental impact on the body's negotiating position with a third party. At the time that the executive session is proposed and voted on, the chair must state on the record that having the discussion in an open session may be detrimental to the public body's negotiating position.

**7. To comply with, or act under the authority of, any general or special law or federal grant-in-aid requirements;**

There may be provisions in certain statutes or federal grants which require or specifically allow that a public body consider a particular issue in a closed session. Additionally, as the following section discusses, where Purpose (8) does not apply, Purpose (7) may nevertheless apply to the initial stage of a hiring process.

**8. To consider or interview applicants for employment or appointment by a preliminary screening committee if the chair declares that an open meeting will have a detrimental effect in obtaining qualified applicants; provided, however, that this clause shall not apply to any meeting, including meetings of a preliminary screening committee, to consider and interview applicants who have passed a prior preliminary screening;**

This Purpose permits a hiring subcommittee of a public body or a preliminary screening committee to conduct the initial screening process in executive session. This Purpose does not apply to any stage in the hiring process after the screening committee or subcommittee votes to recommend a candidate or candidates to its parent body. At the time that the executive session is proposed and voted on, the chair must state on the record that having the discussion in an open session will be detrimental to the public body's ability to attract qualified applicants for the position.

**9. To meet or confer with a mediator, as defined in section 23C of chapter 233, with respect to any litigation or decision on any public business within its jurisdiction involving another party, group or entity, provided that:**

**(i) any decision to participate in mediation shall be made in an open session and the parties, issues involved and purpose of the mediation shall be disclosed; and**

**(ii) no action shall be taken by any public body with respect to those issues which are the subject of the mediation without deliberation and approval for such action at an open session**

**10. To discuss trade secrets or confidential, competitively-sensitive or other proprietary information provided:**

- a. in the course of activities conducted by a governmental body as an energy supplier under a license granted by the department of public utilities pursuant to G.L. c. 164 § 1F,
- b. in the course of activities conducted as a municipal aggregator under G.L. c. 164 § 134, or
- c. in the course of activities conducted by a cooperative consisting of governmental entities organized pursuant to G.L. c. 164 § 136,
- d. when such governmental body, municipal aggregator or cooperative determines that such disclosure will adversely affect its ability to conduct business in relation to other entities making, selling or distributing electric power and energy

**May a member of the public body participate remotely?**

The Attorney General is authorized under the Open Meeting Law to permit remote participation by members of a public body not present at the meeting location. This issue is under consideration by the AGO, which will be seeking public comment. While the issue is under consideration, remote participation by members of public bodies is not permitted under the Open Meeting Law.

**What public participation in meetings must be allowed?**

Under the Open Meeting Law, the public is permitted to attend meetings of public bodies but is excluded from an executive session that is called for a valid purpose listed in the law. Any member of the public also has a right to make an audio or video recording of an open session of a public meeting. A member of the public who wishes to record a meeting must first notify the chair and must comply with reasonable requirements regarding audio or video equipment established by the chair so as not to interfere with the meeting. The chair is required to inform other attendees of such recording at the beginning of the meeting.

While the public is permitted to attend an open meeting, an individual may not address the public body without permission of the chair. An individual is not permitted to disrupt a meeting of a public body, and at the request of the chair, all members of the public shall be silent. If after clear warning, a person continues to be disruptive, the chair may order the person to leave the meeting, and if the person does not leave, the chair may authorize a constable or other officer to remove the person.

## **What records of public meetings must be kept?**

Public bodies are required to create and maintain accurate minutes of all meetings, including executive sessions. The minutes, which must be created and approved in a timely manner, must state the date, time and place of the meeting, a list of the members present or absent, and the decisions made and actions taken including a record of all votes. While the minutes must also include a summary of the discussions on each subject, a transcript is not required. No vote taken by a public body, either in an open or in an executive session, shall be by secret ballot. All votes taken in executive session must be by roll call and the results recorded in the minutes. In addition, the minutes must include a list of the documents and other exhibits used at the meeting. While public bodies are required to retain these records in accordance with records retention laws, the documents and exhibits listed in the minutes need not be physically stored with the minutes.

The minutes, documents and exhibits are public records and a part of the official record of the meeting. Whether records are subject to disclosure under the Open Meeting Law will depend on whether the records are from an open session or an executive session.

### **Open Session Meeting Records**

The Open Meeting Law requires public bodies to create and approve minutes in a timely manner. The law requires that existing minutes be made available to the public within 10 days upon request, whether they have been approved or remain in draft form. Materials or other exhibits used by the public body in an open meeting are also to be made available to the public within 10 days upon request.

There are two exemptions to the open session records disclosure requirement that pertain to: 1) materials (other than those that were created by members of the public body for the purpose of the evaluation) used in a performance evaluation of an individual bearing on his professional competence, and 2) materials (other than any resume submitted by an applicant which is always subject to disclosure) used in deliberations about employment or appointment of individuals, including applications and supporting materials.

### **Executive Session Meeting Records**

Public bodies are not required to disclose the minutes, notes or other materials used in an executive session where the disclosure of these records may defeat the lawful purposes of the executive session. Once disclosure would no longer defeat the purposes of the executive session, minutes and other records from that executive session must be disclosed unless they are within an exemption to the Public Records Law, G.L. c. 4, § 7, cl. 26, or are attorney-client privileged. The public body is also required to periodically review the executive session minutes to determine whether continued non-disclosure is warranted, and such determination must be included in the subsequent meeting minutes. A public body must respond to a request to inspect or copy executive session minutes within 10 days of request and promptly release the records if they are subject to disclosure. If the body has not performed a review to determine

whether they are subject to disclosure, it must do so prior to its next meeting or within 30 days, whichever is sooner.

### **What is the Attorney General's role in enforcing the Open Meeting Law?**

The Attorney General's Division of Open Government is responsible for enforcing the Open Meeting Law. The Attorney General has the authority to take and investigate complaints, bring enforcement actions, issue advisory opinions and issue regulations.

The Division of Open Government regularly seeks feedback from the public on ways in which it can better support public bodies to help them comply with the law's requirements, and will provide online and in-person trainings on the Open Meeting Law. The Division of Open Government will also respond to information requests from public bodies and the public.

The Division of Open Government will take complaints from members of the public and will work with public bodies to resolve problems. While any member of the public may file a complaint with a public body alleging a violation of the Open Meeting Law, a public body need not, and the Division of Open Government will not, investigate anonymous complaints.

### **What is the Open Meeting Law complaint procedure?**

#### **Step 1: Filing a Complaint with the Public Body**

A complaint must be filed in writing with a public body within 30 days of the date the alleged violation, or if the alleged Open Meeting Law violation could not reasonably have been known at the time it occurred, then within 30 days of the date it should reasonably have been discovered. The complaint must be filed using the Open Meeting Law complaint form available on the Attorney General's website. Public bodies, or in the case of local public bodies the municipal clerk, should provide members of the public with a copy of the complaint form upon request.

#### **Step 2: Public Body's Response**

Within 14 business days of the date on which the complaint was filed, the public body must review the complaint and send to the AGO a copy of the complaint along with a description of any action taken to resolve the issue that was raised by the complaint. Within seven business days of the date that the complaint was filed, the public body may request additional information from the person making the complaint if necessary to resolve the complaint. The person making the complaint shall provide the additional information to the public body within 10 business days, and the public body shall have 10 additional business days (total 24 business days from the date complaint was originally filed) to act on the complaint and notify the AGO. The public body may request additional time to consider taking remedial action and must make that request in writing to the AGO, to the Attention of the



Director of the Division of Open Government. The AGO may, at its discretion, grant additional time to the public body if it determines there is a showing of good cause to grant the extension.

#### Step 3: Filing a Complaint with the Attorney General

If the person who brought the complaint is not satisfied with the action taken by the public body, that person may file a copy of the complaint, along with any other materials the person making the complaint believes are relevant, with the AGO. The AGO may decline to investigate complaints that are filed with the Attorney General more than 90 days after the alleged Open Meeting Law violation, unless an extension was granted to the public body or the person making the complaint demonstrates good cause for the delay.

#### Step 4: Attorney General's Investigation

After reviewing a complaint and supporting materials, the AGO will determine whether there is reasonable cause to believe that the Open Meeting Law has been violated, and if so, whether to conduct a formal investigation. The AGO may request additional information from the person making the complaint. In the event that the AGO opens a formal investigation, the public body shall provide the Attorney General with such information and documents as may be requested. The AGO has the authority compel the production of documents, take oral testimony, and convene a hearing as may be necessary. The AGO will resolve complaints within a reasonable period of time, generally 90 days.

#### Step 5: Attorney General's Findings

The AGO will make findings, and where a violation has occurred, may order remedial action. If the AGO determines, after investigation, that the Open Meeting Law has been violated unintentionally, then the AGO will resolve the investigation by informal action or by formal ruling for more significant violations. The AGO may order remedial action by the public body directing immediate and future compliance with the law, attendance at a training session, release of records, or other appropriate action.

Where the AGO seeks to reinstate an employee or nullify the action of a public body as a remedy for the violation, the AGO will ordinarily convene a hearing to take testimony from witnesses to determine the appropriate remedy. If the AGO has reasonable cause to believe that the Open Meeting Law has been violated intentionally, the AGO may convene a hearing to determine whether the violation was intentional, whether the public body, one or more of its members, or both, were responsible, and whether to impose on the public body a civil penalty of up to \$1,000 for each violation.

Public bodies and members of the public should consult the Attorney General's Open Meeting Website for the most up-to-date procedural regulations and other materials related to the law.

## **Will the Attorney General's Office provide training on the Open Meeting Law?**

The Open Meeting Law directs the AGO to create educational materials and provide training to public bodies to foster awareness of and compliance with the Open Meeting Law. The AGO has established an Open Meeting Law website, [www.mass.gov/ago/openmeeting](http://www.mass.gov/ago/openmeeting), on which government officials and members of public bodies can find the statute, regulations, opinions, training materials and a schedule of in-person and online training. The AGO will provide regional trainings for members of public bodies and will hold periodic online webinars. For those who cannot attend live training sessions, the Attorney General's website will provide training materials and answers to frequently asked questions.

## **Contacting the Attorney General**

If you have any questions about the Open Meeting Law or anything contained in this guide, please contact the Division of Open Government at the Attorney General's Office. The AGO also welcomes any comments, feedback, or suggestions you may have about the Open Meeting Law or this guide.

Division of Open Government  
Office of the Attorney General  
617-963-2540  
[www.mass.gov/ago/openmeeting](http://www.mass.gov/ago/openmeeting)  
[OpenMeeting@state.ma.us](mailto:OpenMeeting@state.ma.us)  
One Ashburton Place  
Boston, MA 02108

THE COMMONWEALTH OF MASSACHUSETTS

OPEN MEETING LAW, G.L. c. 30A, §§18-25

\* \* \*

*Chapter 28 of the Acts of 2009, sections 17-20, repealed the existing state Open Meeting Law, G.L. c. 30A, §§ 11A, 11A-1/2, county Open Meeting Law, G.L. c. 34, §§9F, 9G, and municipal Open Meeting Law, G.L. c. 39, §§ 23A, 23B, and 23C, and replaced them with a single Open Meeting Law covering all public bodies, G.L. c. 30A, §§ 18-25, enforced by the Attorney General.*

\* \* \*

**SECTION 18: [DEFINITIONS]**

As used in this section and sections 19 to 25, inclusive, the following words shall, unless the context clearly requires otherwise, have the following meanings:

"Deliberation", an oral or written communication through any medium, including electronic mail, between or among a quorum of a public body on any public business within its jurisdiction; provided, however, that "deliberation" shall not include the distribution of a meeting agenda, scheduling information or distribution of other procedural meeting or the distribution of reports or documents that may be discussed at a meeting, provided that no opinion of a member is expressed.

"Emergency", a sudden, generally unexpected occurrence or set of circumstances demanding immediate action.

"Executive session", any part of a meeting of a public body closed to the public for deliberation of certain matters.

"Intentional violation", an act or omission by a public body or a member thereof, in knowing by violating the open meeting law.

"Meeting", a deliberation by a public body with respect to any matter within the body's jurisdiction; provided, however, "meeting" shall not include:

(a) an on-site inspection of a project or program, so long as the members do not deliberate;  
(b) attendance by a quorum of a public body at a public or private gathering, including a conference or training program or a media, social or other event, so long as the members do not deliberate;

(c) attendance by a quorum of a public body at a meeting of another public body that has complied with the notice requirements of the open meeting law, so long as the visiting members communicate only by open participation in the meeting on those matters under discussion by the host body and do not deliberate;

(d) a meeting of a quasi-judicial board or commission held for the sole purpose of making a decision required in an adjudicatory proceeding brought before it; or

(e) a session of a town meeting convened under section 10 of chapter 39 which would include the attendance by a quorum of a public body at any such session.

"Minutes", the written report of a meeting created by a public body required by subsection (a) of section 23 and section 5A of chapter 66.

"Open meeting law", sections 18 to 25, inclusive.

"Post notice", to display conspicuously the written announcement of a meeting either in hard copy or electronic format.

"Preliminary screening", the initial stage of screening applicants conducted by a committee or subcommittee of a public body solely for the purpose of providing to the public body a list of those applicants qualified for further consideration or interview.

"Public body", a multiple-member board, commission, committee or subcommittee within the executive or legislative branch or within any county, district, city, region or town, however created, elected, appointed or otherwise constituted, established to serve a public purpose; provided, however, that the governing board of a local housing, redevelopment or other similar authority shall be deemed a

local public body; provided, further, that the governing board or body of any other authority established by the general court to serve a public purpose in the commonwealth or any part thereof shall be deemed a state public body; provided, further, that "public body" shall not include the general court or the committees or recess commissions thereof, bodies of the judicial branch or bodies appointed by a constitutional officer solely for the purpose of advising a constitutional officer and shall not include the board of bank incorporation or the policyholders protective board; and provided further, that a subcommittee shall include any multiple-member body created to advise or make recommendations to a public body.

"Quorum", a simple majority of the members of the public body, unless otherwise provided in a general or special law, executive order or other authorizing provision.

#### **SECTION 19. [DIVISION OF OPEN GOVERNMENT AND ADVISORY COMMISSION]**

(a) There shall be in the department of the attorney general a division of open government under the direction of a director of open government. The attorney general shall designate an assistant attorney general as the director of the open government division. The director may appoint and remove, subject to the approval of the attorney general, such expert, clerical and other assistants as the work of the division may require. The division shall perform the duties imposed upon the attorney general by the open meeting law, which may include participating, appearing and intervening in any administrative and judicial proceedings pertaining to the enforcement of the open meeting law. For the purpose of such participation, appearance, intervention and training authorized by this chapter the attorney general may expend such funds as may be appropriated therefor.

(b) The attorney general shall create and distribute educational materials and provide training to public bodies in order to foster awareness and compliance with the open meeting law. Open meeting law training may include, but shall not be limited to, instruction in:

- (1) the general background of the legal requirements for the open meeting law;
- (2) applicability of sections 18 to 25, inclusive, to governmental bodies;
- (3) the role of the attorney general in enforcing the open meeting law; and
- (4) penalties and other consequences for failure to comply with this chapter.

(c) There shall be an open meeting law advisory commission. The commission shall consist of 5 members, 2 of whom shall be the chairmen of the joint committee on state administration and regulatory oversight; 1 of whom shall be the president of the Massachusetts Municipal Association or his designee; 1 of whom shall be the president of the Massachusetts Newspaper Publishers Association or his designee; and 1 of whom shall be the attorney general or his designee.

The commission shall review issues relative to the open meeting law and shall submit to the attorney general recommendations for changes to the regulations, trainings, and educational initiatives relative to the open meeting law as it deems necessary and appropriate.

(d) The attorney general shall, not later than January 31, file annually with the commission a report providing information on the enforcement of the open meeting law during the preceding calendar year. The report shall include, but not be limited to:

- (1) the number of open meeting law complaints received by the attorney general;
- (2) the number of hearings convened as the result of open meeting law complaints by the attorney general;
- (3) a summary of the determinations of violations made by the attorney general;
- (4) a summary of the orders issued as the result of the determination of an open meeting law violation by the attorney general;
- (5) an accounting of the fines obtained by the attorney general as the result of open meeting law enforcement actions;
- (6) the number of actions filed in superior court seeking relief from an order of the attorney general; and
- (7) any additional information relevant to the administration and enforcement of the open meeting law that the attorney general deems appropriate.

**SECTION 20. [NOTICE, REMOTE PARTICIPATION, PUBLIC PARTICIPATION, CERTIFICATION]**

(a) Except as provided in section 21, all meetings of a public body shall be open to the public.

(b) Except in an emergency, in addition to any notice otherwise required by law, a public body shall post notice of every meeting at least 48 hours prior to such meeting, excluding Saturdays, Sundays and legal holidays. In an emergency, a public body shall post notice as soon as reasonably possible prior to such meeting. Notice shall be printed in a legible, easily understandable format and shall contain the date, time and place of such meeting and a listing of topics that the chair reasonably anticipates will be discussed at the meeting.

(c) For meetings of a local public body, notice shall be filed with the municipal clerk and posted in a manner conspicuously visible to the public at all hours in or on the municipal building in which the clerk's office is located.

For meetings of a regional or district public body, notice shall be filed and posted in each city or town within the region or district in the manner prescribed for local public bodies. For meetings of a regional school district, the secretary of the regional school district committee shall be considered to be its clerk and shall file notice with the clerk of each city or town within such district and shall post the notice in the manner prescribed for local public bodies. For meetings of a county public body, notice shall be filed in the office of the county commissioners and a copy of the notice shall be publicly posted in a manner conspicuously visible to the public at all hours in such place or places as the county commissioners shall designate for the purpose.

For meetings of a state public body, notice shall be filed with the attorney general and a duplicate copy of said notice shall be filed with the regulations division of the state secretary's office by posting on a website in accordance with procedures established for this purpose.

The attorney general shall have the authority to prescribe or approve alternative methods of notice where the attorney general determines such alternative will afford more effective notice to the public.

(d) The attorney general may by regulation or letter ruling, authorize remote participation by members of a public body not present at the meeting location; provided, however, that the absent members and all persons present at the meeting location are clearly audible to each other; and provided, further, that a quorum of the body, including the chair, are present at the meeting location. Such authorized members may vote and shall not be deemed absent for the purposes of section 23D of chapter 39.

(e) After notifying the chair of the public body, any person may make a video or audio recording of an open session of a meeting of a public body, or may transmit the meeting through any medium, subject to reasonable requirements of the chair as to the number, placement and operation of equipment used so as not to interfere with the conduct of the meeting. At the beginning of the meeting the chair shall inform other attendees of any such recordings.

(f) No person shall address a meeting of a public body without permission of the chair, and all persons shall, at the request of the chair, be silent. No person shall disrupt the proceedings of a meeting of a public body. If, after clear warning from the chair, a person continues to disrupt the proceedings, the chair may order the person to withdraw from the meeting and if the person does not withdraw, the chair may authorize a constable or other officer to remove the person from the meeting.

(g) Within 2 weeks of qualification for office, all persons serving on a public body shall certify, on a form prescribed by the attorney general, the receipt of a copy of the open meeting law, regulations promulgated pursuant to section 25 and a copy of the educational materials prepared by the attorney general explaining the open meeting law and its application pursuant to section 19. Unless otherwise directed or approved by the attorney general, the appointing authority, city or town clerk or the executive director or other appropriate administrator of a state or regional body, or their designees, shall obtain such certification from each person upon entering service and shall retain it subject to the applicable records retention schedule where the body maintains its official records. The certification shall be evidence that the member of a public body has read and understands the requirements of the open meeting law and the consequences of violating it.

## **SECTION 21. [EXECUTIVE SESSIONS]**

(a) A public body may meet in executive session only for the following purposes:

(1) To discuss the reputation, character, physical condition or mental health, rather than professional competence, of an individual, or to discuss the discipline or dismissal of, or complaints or charges brought against, a public officer, employee, staff member or individual. The individual to be discussed in such executive session shall be notified in writing by the public body at least 48 hours prior to the proposed executive session; provided, however, that notification may be waived upon written agreement of the parties. A public body shall hold an open session if the individual involved requests that the session be open. If an executive session is held, such individual shall have the following rights:

- i. to be present at such executive session during deliberations which involve that individual;
- ii. to have counsel or a representative of his own choosing present and attending for the purpose of advising the individual and not for the purpose of active participation in the executive session;
- iii. to speak on his own behalf; and
- iv. to cause an independent record to be created of said executive session by audio-recording or transcription, at the individual's expense.

The rights of an individual set forth in this paragraph are in addition to the rights that he may have from any other source, including, but not limited to, rights under any laws or collective bargaining agreements and the exercise or non-exercise of the individual rights under this section shall not be construed as a waiver of any rights of the individual.

2. To conduct strategy sessions in preparation for negotiations with nonunion personnel or to conduct collective bargaining sessions or contract negotiations with nonunion personnel;

3. To discuss strategy with respect to collective bargaining or litigation if an open meeting may have a detrimental effect on the bargaining or litigating position of the public body and the chair so declares;

4. To discuss the deployment of security personnel or devices, or strategies with respect thereto;

5. To investigate charges of criminal misconduct or to consider the filing of criminal complaints;

6. To consider the purchase, exchange, lease or value of real property if the chair declares that an open meeting may have a detrimental effect on the negotiating position of the public body;

7. To comply with, or act under the authority of, any general or special law or federal grant-in-aid requirements;

8. To consider or interview applicants for employment or appointment by a preliminary screening committee if the chair declares that an open meeting will have a detrimental effect in obtaining qualified applicants; provided, however, that this clause shall not apply to any meeting, including meetings of a preliminary screening committee, to consider and interview applicants who have passed a prior preliminary screening;

9. To meet or confer with a mediator, as defined in section 23C of chapter 233, with respect to any litigation or decision on any public business within its jurisdiction involving another party, group or entity, provided that:

(i) any decision to participate in mediation shall be made in an open session and the parties, issues involved and purpose of the mediation shall be disclosed; and

(ii) no action shall be taken by any public body with respect to those issues which are the subject of the mediation without deliberation and approval for such action at an open session; or

10. to discuss trade secrets or confidential, competitively-sensitive or other proprietary information provided in the course of activities conducted by a governmental body as an energy supplier under a license granted by the department of public utilities pursuant to section 1F of chapter 164, in the course of activities conducted as a municipal aggregator under section 134 of said chapter 164 or in the course of activities conducted by a cooperative consisting of governmental entities organized pursuant to section 136 of said chapter 164, when such governmental body, municipal aggregator or cooperative determines that such disclosure will adversely affect its ability to conduct business in relation to other entities making, selling or distributing electric power and energy.

(b) A public body may meet in closed session for 1 or more of the purposes enumerated in subsection (a) provided that:

1. the body has first convened in an open session pursuant to section 21;
2. a majority of members of the body have voted to go into executive session and the vote of each member is recorded by roll call and entered into the minutes;
3. before the executive session, the chair shall state the purpose for the executive session, stating all subjects that may be revealed without compromising the purpose for which the executive session was called;
4. the chair shall publicly announce whether the open session will reconvene at the conclusion of the executive session; and
5. accurate records of the executive session shall be maintained pursuant to section 23.

## **SECTION 22. [MINUTES, RECORDS]**

(a) A public body shall create and maintain accurate minutes of all meetings, including executive sessions, setting forth the date, time and place, the members present or absent, a summary of the discussions on each subject, a list of documents and other exhibits used at the meeting, the decisions made and the actions taken at each meeting, including the record of all votes.

(b) No vote taken at an open session shall be by secret ballot. Any vote taken at an executive session shall be recorded by roll call and entered into the minutes.

(c) Minutes of all open sessions shall be created and approved in a timely manner. The minutes of an open session, if they exist and whether approved or in draft form, shall be made available upon request by any person within 10 days.

(d) Documents and other exhibits, such as photographs, recordings or maps, used by the body at an open or executive session shall, along with the minutes, be part of the official record of the session.

(e) The minutes of any open session, the notes, recordings or other materials used in the preparation of such minutes and all documents and exhibits used at the session, shall be public records in their entirety and not exempt from disclosure pursuant to any of the exemptions under clause Twenty-sixth of section 7 of chapter 4. Notwithstanding this paragraph, the following materials shall be exempt from disclosure to the public as personnel information: (1) materials used in a performance evaluation of an individual bearing on his professional competence, provided they were not created by the members of the body for the purposes of the evaluation; and (2) materials used in deliberations about employment or appointment of individuals, including applications and supporting materials; provided, however, that any resume submitted by an applicant shall not be exempt.

(f) The minutes of any executive session, the notes, recordings or other materials used in the preparation of such minutes and all documents and exhibits used at the session, may be withheld from disclosure to the public in their entirety under subclause (a) of clause Twenty-sixth of section 7 of chapter 4, as long as publication may defeat the lawful purposes of the executive session, but no longer; provided, however, that the executive session was held in compliance with section 21.

When the purpose for which a valid executive session was held has been served, the minutes, preparatory materials and documents and exhibits of the session shall be disclosed unless the attorney-client privilege or 1 or more of the exemptions under said clause Twenty-sixth of said section 7 of said chapter 4 apply to withhold these records, or any portion thereof, from disclosure.

For purposes of this subsection, if an executive session is held pursuant to clause (2) or (3) of subsections (a) of section 21, then the minutes, preparatory materials and documents and exhibits used at the session may be withheld from disclosure to the public in their entirety, unless and until such time as a litigating, negotiating or bargaining position is no longer jeopardized by such disclosure, at which time they shall be disclosed unless the attorney-client privilege or 1 or more of the exemptions under said clause Twenty-sixth of said section 7 of said chapter 4 apply to withhold these records, or any portion thereof, from disclosure.

(g)(1) The public body, or its chair or designee, shall, at reasonable intervals, review the minutes of executive sessions to determine if the provisions of this subsection warrant continued non-disclosure.

Such determination shall be announced at the body's next meeting and such announcement shall be included in the minutes of that meeting.

(2) Upon request by any person to inspect or copy the minutes of an executive session or any portion thereof, the body shall respond to the request within 10 days following receipt and shall release any such minutes not covered by an exemption under subsection (f); provided, however, that if the body has not performed a review pursuant to paragraph (1), the public body shall perform the review and release the non-exempt minutes, or any portion thereof, not later than the body's next meeting or 30 days, whichever first occurs. A public body shall not assess a fee for the time spent in its review.

### **SECTION 23. [COMPLAINTS, REMEDIES]**

(a) Subject to appropriation, the attorney general shall interpret and enforce the open meeting law.

(b) At least 30 days prior to the filing of a complaint with the attorney general, the complainant shall file a written complaint with the public body, setting forth the circumstances which constitute the alleged violation and giving the body an opportunity to remedy the alleged violation; provided, however, that such complaint shall be filed within 30 days of the date of the alleged violation. The public body shall, within 14 business days of receipt of a complaint, send a copy of the complaint to the attorney general and notify the attorney general of any remedial action taken. Any remedial action taken by the public body in response to a complaint under this subsection shall not be admissible as evidence against the public body that a violation occurred in any later administrative or judicial proceeding relating to such alleged violation. The attorney general may authorize an extension of time to the public body for the purpose of taking remedial action upon the written request of the public body and a showing of good cause to grant the extension.

(c) Upon the receipt of a complaint by any person, the attorney general shall determine, in a timely manner, whether there has been a violation of the open meeting law. The attorney general may, and before imposing any civil penalty on a public body shall, hold a hearing on any such complaint. Following a determination that a violation has occurred, the attorney general shall determine whether the public body, 1 or more of the members, or both, are responsible and whether the violation was intentional or unintentional. Upon the finding of a violation, the attorney general may issue an order to:

- (1) compel immediate and future compliance with the open meeting law;
- (2) compel attendance at a training session authorized by the attorney general;
- (3) nullify in whole or in part any action taken at the meeting;
- (4) impose a civil penalty upon the public body of not more than \$1,000 for each intentional violation;
- (5) reinstate an employee without loss of compensation, seniority, tenure or other benefits;
- (6) compel that minutes, records or other materials be made public; or
- (7) prescribe other appropriate action.

(d) A public body or any member of a body aggrieved by any order issued pursuant to this section may, notwithstanding any general or special law to the contrary, obtain judicial review of the order only through an action in superior court seeking relief in the nature of certiorari; provided, however, that notwithstanding section 4 of chapter 249, any such action shall be commenced in superior court within 21 days of receipt of the order. Any order issued under this section shall be stayed pending judicial review; provided, however, that if the order nullifies an action of the public body, the body shall not implement such action pending judicial review.

(e) If any public body or member thereof shall fail to comply with the requirements set forth in any order issued by the attorney general, or shall fail to pay any civil penalty imposed within 21 days of the date of issuance of such order or within 30 days following the decision of the superior court if judicial review of such order has been timely sought, the attorney general may file an action to compel compliance. Such action shall be filed in Suffolk superior court with respect to state public bodies and, with respect to all other public bodies, in the superior court in any county in which the public body acts or meets. If such body or member has not timely sought judicial review of the order, such order shall not be



open to review in an action to compel compliance.

(f) As an alternative to the procedure in subsection (b), the attorney general or 3 or more registered voters may initiate a civil action to enforce the open meeting law.

Any action under this subsection shall be filed in Suffolk superior court with respect to state public bodies and, with respect to all other public bodies, in the superior court in any county in which the public body acts or meets.

In any action filed pursuant to this subsection, in addition to all other remedies available to the superior court, in law or in equity, the court shall have all of the remedies set forth in subsection (b).

In any action filed under this subsection, the order of notice on the complaint shall be returnable not later than 10 days after the filing and the complaint shall be heard and determined on the return day or on such day as the court shall fix, having regard to the speediest possible determination of the cause consistent with the rights of the parties; provided, however, that orders may be issued at any time on or after the filing of the complaint without notice when such order is necessary to fulfill the purposes of the open meeting law. In the hearing of any action under this subsection, the burden shall be on the respondent to show by a preponderance of the evidence that the action complained of in such complaint was in accordance with and authorized by the open meeting law; provided, however, that no civil penalty may be imposed on an individual absent proof that the action complained of violated the open meeting law.

(g) It shall be a defense to the imposition of a penalty that the public body, after full disclosure, acted in good faith compliance with the advice of the public body's legal counsel.

(h) Payment of civil penalties under this section paid to or received by the attorney general shall be paid into the general fund of the commonwealth.

#### **SECTION 24. [INVESTIGATIONS, HEARINGS]**

(a) Whenever the attorney general has reasonable cause to believe that a person, including any public body and any other state, regional, county, municipal or other governmental official or entity, has violated the open meeting law, the attorney general may conduct an investigation to ascertain whether in fact such person has violated the open meeting law. Upon notification of an investigation, any person, public body or any other state, regional, county, municipal or other governmental official or entity who is the subject of an investigation, shall make all information necessary to conduct such investigation available to the attorney general. In the event that the person, public body or any other state, regional, county, municipal or other governmental official or entity being investigated does not voluntarily provide relevant information to the attorney general within 30 days of receiving notice of the investigation, the attorney general may: (1) take testimony under oath concerning such alleged violation of the open meeting law; (2) examine or cause to be examined any documentary material of whatever nature relevant to such alleged violation of the open meeting law; and (3) require attendance during such examination of documentary material of any person having knowledge of the documentary material and take testimony under oath or acknowledgment in respect of any such documentary material. Such testimony and examination shall take place in the county where such person resides or has a place of business or, if the parties consent or such person is a nonresident or has no place of business within the commonwealth, in Suffolk county.

(b) Notice of the time, place and cause of such taking of testimony, examination or attendance shall be given by the attorney general at least 10 days prior to the date of such taking of testimony or examination.

(c) Service of any such notice may be made by: (1) delivering a duly-executed copy to the person to be served or to a partner or to any officer or agent authorized by appointment or by law to receive service of process on behalf of such person; (2) delivering a duly-executed copy to the principal place of business in the commonwealth of the person to be served; or (3) mailing by registered or certified mail a duly-executed copy addressed to the person to be served at the principal place of business in the commonwealth or, if said person has no place of business in the commonwealth, to his principal office or place of business.

(d) Each such notice shall: (1) state the time and place for the taking of testimony or the examination and the name and address of each person to be examined, if known and, if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs; (2) state the statute and section thereof, the alleged violation of which is under investigation and the general subject matter of the investigation; (3) describe the class or classes of documentary material to be produced thereunder with reasonable specificity, so as fairly to indicate the material demanded; (4) prescribe a return date within which the documentary material is to be produced; and (5) identify the members of the attorney general's staff to whom such documentary material is to be made available for inspection and copying.

(e) No such notice shall contain any requirement which would be unreasonable or improper if contained in a subpoena duces tecum issued by a court of the commonwealth or require the disclosure of any documentary material which would be privileged, or which for any other reason would not be required by a subpoena duces tecum issued by a court of the commonwealth.

(f) Any documentary material or other information produced by any person pursuant to this section shall not, unless otherwise ordered by a court of the commonwealth for good cause shown, be disclosed to any person other than the authorized agent or representative of the attorney general, unless with the consent of the person producing the same; provided, however, that such material or information may be disclosed by the attorney general in court pleadings or other papers filed in court.

(g) At any time prior to the date specified in the notice, or within 21 days after the notice has been served, whichever period is shorter, the court may, upon motion for good cause shown, extend such reporting date or modify or set aside such demand or grant a protective order in accordance with the standards set forth in Rule 26(c) of the Massachusetts Rules of Civil Procedure. The motion may be filed in the superior court of the county in which the person served resides or has his usual place of business or in Suffolk county. This section shall not be applicable to any criminal proceeding nor shall information obtained under the authority of this section be admissible in evidence in any criminal prosecution for substantially identical transactions.

## **SECTION 25. [REGULATIONS AND ADVISORY OPINIONS]**

(a) The attorney general shall have the authority to promulgate rules and regulations to carry out enforcement of the open meeting law.

(b) The attorney general shall have the authority to interpret the open meeting law and to issue written letter rulings or advisory opinions according to rules established under this section.

**CERTIFICATE OF RECEIPT OF OPEN MEETING LAW MATERIALS**

I, \_\_\_\_\_, who qualified for the office of  
(Name)

\_\_\_\_\_, on \_\_\_\_\_, certify pursuant  
(Office) (Date)

to G.L. c. 30A, § 20(g), that I have received copies of the following Open Meeting Law materials:

- 1) the Open Meeting Law, G.L. c. 30A, §§ 18-25;
- 2) regulations promulgated by the Attorney General under G.L. c. 30A, § 25; and
- 3) educational materials promulgated by the Attorney General under G.L. c. 30A, § 19(b), explaining the Open Meeting Law and its application.

I have read and understand the requirements of the Open Meeting Law and the consequences for violating it. I further understand that the materials I have received may be revised or updated from time to time, and that I have a continuing obligation to implement any changes in the Open Meeting Law during my term of office.

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Name of Public Body)

\_\_\_\_\_  
(Date)

*Pursuant to G.L. c. 30A, § 20(g), an executed copy of this certificate shall be retained, according to the relevant records retention schedule, by the appointing authority, city or town clerk, or the executive director or other appropriate administrator of a state or regional body, or their designee.*

THE COMMONWEALTH OF MASSACHUSETTS

OPEN MEETING LAW, G.L. c. 30A, §§ 18-25

\* \* \*

*Chapter 28 of the Acts of 2009, sections 17-20, repealed the existing state Open Meeting Law, G.L. c. 30A, §§ 11A, 11A-1/2, county Open Meeting Law, G.L. c. 34, §9F, 9G, and municipal Open Meeting Law, G.L. c. 39, §§ 23A, 23B, and 23C, and replaced them with a single Open Meeting Law covering all public bodies, G.L. c. 30A, §§ 18-25, enforced by the Attorney General.*

\* \* \*

**SECTION 18: [DEFINITIONS]**

As used in this section and sections 19 to 25, inclusive, the following words shall, unless the context clearly requires otherwise, have the following meanings:

"Deliberation", an oral or written communication through any medium, including electronic mail, between or among a quorum of a public body on any public business within its jurisdiction; provided, however, that "deliberation" shall not include the distribution of a meeting agenda, scheduling information or distribution of other procedural meeting or the distribution of reports or documents that may be discussed at a meeting, provided that no opinion of a member is expressed.

"Emergency", a sudden, generally unexpected occurrence or set of circumstances demanding immediate action.

"Executive session", any part of a meeting of a public body closed to the public for deliberation of certain matters.

"Intentional violation", an act or omission by a public body or a member thereof, in knowing by violating the open meeting law.

"Meeting", a deliberation by a public body with respect to any matter within the body's jurisdiction; provided, however, "meeting" shall not include:

- (a) an on-site inspection of a project or program, so long as the members do not deliberate;
- (b) attendance by a quorum of a public body at a public or private gathering, including a conference or training program or a media, social or other event, so long as the members do not deliberate;
- (c) attendance by a quorum of a public body at a meeting of another public body that has complied with the notice requirements of the open meeting law, so long as the visiting members communicate only by open participation in the meeting on those matters under discussion by the host body and do not deliberate;
- (d) a meeting of a quasi-judicial board or commission held for the sole purpose of making a decision required in an adjudicatory proceeding brought before it; or
- (e) a session of a town meeting convened under section 10 of chapter 39 which would include the attendance by a quorum of a public body at any such session.

"Minutes", the written report of a meeting created by a public body required by subsection (a) of section 23 and section 5A of chapter 66.

"Open meeting law", sections 18 to 25, inclusive.

"Post notice", to display conspicuously the written announcement of a meeting either in hard copy or electronic format.

"Preliminary screening", the initial stage of screening applicants conducted by a committee or subcommittee of a public body solely for the purpose of providing to the public body a list of those applicants qualified for further consideration or interview.

"Public body", a multiple-member board, commission, committee or subcommittee within the executive or legislative branch or within any county, district, city, region or town, however created, elected, appointed or otherwise constituted, established to serve a public purpose; provided, however, that the governing board of a local housing, redevelopment or other similar authority shall be deemed a local public body; provided, further, that the governing board or body of any other authority established by the general court to serve a public purpose in the commonwealth or any part thereof shall be deemed a state public body; provided, further, that "public body" shall not include the general court or the committees or recess commissions thereof, bodies of the judicial branch or

bodies appointed by a constitutional officer solely for the purpose of advising a constitutional officer and shall not include the board of bank incorporation or the policyholders protective board; and provided further, that a subcommittee shall include any multiple-member body created to advise or make recommendations to a public body.

"Quorum", a simple majority of the members of the public body, unless otherwise provided in a general or special law, executive order or other authorizing provision.

#### **SECTION 19. [DIVISION OF OPEN GOVERNMENT AND ADVISORY COMMISSION]**

(a) There shall be in the department of the attorney general a division of open government under the direction of a director of open government. The attorney general shall designate an assistant attorney general as the director of the open government division. The director may appoint and remove, subject to the approval of the attorney general, such expert, clerical and other assistants as the work of the division may require. The division shall perform the duties imposed upon the attorney general by the open meeting law, which may include participating, appearing and intervening in any administrative and judicial proceedings pertaining to the enforcement of the open meeting law. For the purpose of such participation, appearance, intervention and training authorized by this chapter the attorney general may expend such funds as may be appropriated therefor.

(b) The attorney general shall create and distribute educational materials and provide training to public bodies in order to foster awareness and compliance with the open meeting law. Open meeting law training may include, but shall not be limited to, instruction in:

- (1) the general background of the legal requirements for the open meeting law;
- (2) applicability of sections 18 to 25, inclusive, to governmental bodies;
- (3) the role of the attorney general in enforcing the open meeting law; and
- (4) penalties and other consequences for failure to comply with this chapter.

(c) There shall be an open meeting law advisory commission. The commission shall consist of 5 members, 2 of whom shall be the chairmen of the joint committee on state administration and regulatory oversight; 1 of whom shall be the president of the Massachusetts Municipal Association or his designee; 1 of whom shall be the president of the Massachusetts Newspaper Publishers Association or his designee; and 1 of whom shall be the attorney general or his designee.

The commission shall review issues relative to the open meeting law and shall submit to the attorney general recommendations for changes to the regulations, trainings, and educational initiatives relative to the open meeting law as it deems necessary and appropriate.

(d) The attorney general shall, not later than January 31, file annually with the commission a report providing information on the enforcement of the open meeting law during the preceding calendar year. The report shall include, but not be limited to:

- (1) the number of open meeting law complaints received by the attorney general;
- (2) the number of hearings convened as the result of open meeting law complaints by the attorney general;
- (3) a summary of the determinations of violations made by the attorney general;
- (4) a summary of the orders issued as the result of the determination of an open meeting law violation by the attorney general;
- (5) an accounting of the fines obtained by the attorney general as the result of open meeting law enforcement actions;
- (6) the number of actions filed in superior court seeking relief from an order of the attorney general; and
- (7) any additional information relevant to the administration and enforcement of the open meeting law that the attorney general deems appropriate.

#### **SECTION 20. [NOTICE, REMOTE PARTICIPATION, PUBLIC PARTICIPATION, CERTIFICATION]**

(a) Except as provided in section 21, all meetings of a public body shall be open to the public.

(b) Except in an emergency, in addition to any notice otherwise required by law, a public body shall post notice of every meeting at least 48 hours prior to such meeting, excluding Saturdays, Sundays and legal holidays. In an emergency, a public body shall post notice as soon as reasonably possible prior to such meeting. Notice shall be

printed in a legible, easily understandable format and shall contain the date, time and place of such meeting and a listing of topics that the chair reasonably anticipates will be discussed at the meeting.

(c) For meetings of a local public body, notice shall be filed with the municipal clerk and posted in a manner conspicuously visible to the public at all hours in or on the municipal building in which the clerk's office is located.

For meetings of a regional or district public body, notice shall be filed and posted in each city or town within the region or district in the manner prescribed for local public bodies. For meetings of a regional school district, the secretary of the regional school district committee shall be considered to be its clerk and shall file notice with the clerk of each city or town within such district and shall post the notice in the manner prescribed for local public bodies. For meetings of a county public body, notice shall be filed in the office of the county commissioners and a copy of the notice shall be publicly posted in a manner conspicuously visible to the public at all hours in such place or places as the county commissioners shall designate for the purpose.

For meetings of a state public body, notice shall be filed with the attorney general by posting on a website in accordance with procedures established for this purpose.

The attorney general shall have the authority to prescribe or approve alternative methods of notice where the attorney general determines such alternative will afford more effective notice to the public.

(d) The attorney general may by regulation or letter ruling, authorize remote participation by members of a public body not present at the meeting location; provided, however, that the absent members and all persons present at the meeting location are clearly audible to each other; and provided, further, that a quorum of the body, including the chair, are present at the meeting location. Such authorized members may vote and shall not be deemed absent for the purposes of section 23D of chapter 39.

(e) After notifying the chair of the public body, any person may make a video or audio recording of an open session of a meeting of a public body, or may transmit the meeting through any medium, subject to reasonable requirements of the chair as to the number, placement and operation of equipment used so as not to interfere with the conduct of the meeting. At the beginning of the meeting the chair shall inform other attendees of any such recordings.

(f) No person shall address a meeting of a public body without permission of the chair, and all persons shall, at the request of the chair, be silent. No person shall disrupt the proceedings of a meeting of a public body. If, after clear warning from the chair, a person continues to disrupt the proceedings, the chair may order the person to withdraw from the meeting and if the person does not withdraw, the chair may authorize a constable or other officer to remove the person from the meeting.

(g) Within 2 weeks of qualification for office, all persons serving on a public body shall certify, on a form prescribed by the attorney general, the receipt of a copy of the open meeting law, regulations promulgated pursuant to section 25 and a copy of the educational materials prepared by the attorney general explaining the open meeting law and its application pursuant to section 19. Unless otherwise directed or approved by the attorney general, the appointing authority, city or town clerk or the executive director or other appropriate administrator of a state or regional body, or their designees, shall obtain such certification from each person upon entering service and shall retain it subject to the applicable records retention schedule where the body maintains its official records. The certification shall be evidence that the member of a public body has read and understands the requirements of the open meeting law and the consequences of violating it.

## **SECTION 21. [EXECUTIVE SESSIONS]**

(a) A public body may meet in executive session only for the following purposes:

(1) To discuss the reputation, character, physical condition or mental health, rather than professional competence, of an individual, or to discuss the discipline or dismissal of, or complaints or charges brought against, a public officer, employee, staff member or individual. The individual to be discussed in such executive session shall be notified in writing by the public body at least 48 hours prior to the proposed executive session; provided, however, that notification may be waived upon written agreement of the parties. A public body shall hold an open session if the individual involved requests that the session be open. If an executive session is held, such individual shall have the following rights:

- i. to be present at such executive session during deliberations which involve that individual;
- ii. to have counsel or a representative of his own choosing present and attending for the purpose of advising the individual and not for the purpose of active participation in the executive session;
- iii. to speak on his own behalf; and

iv. to cause an independent record to be created of said executive session by audio-recording or transcription, at the individual's expense.

The rights of an individual set forth in this paragraph are in addition to the rights that he may have from any other source, including, but not limited to, rights under any laws or collective bargaining agreements and the exercise or non-exercise of the individual rights under this section shall not be construed as a waiver of any rights of the individual.

2. To conduct strategy sessions in preparation for negotiations with nonunion personnel or to conduct collective bargaining sessions or contract negotiations with nonunion personnel;

3. To discuss strategy with respect to collective bargaining or litigation if an open meeting may have a detrimental effect on the bargaining or litigating position of the public body and the chair so declares;

4. To discuss the deployment of security personnel or devices, or strategies with respect thereto;

5. To investigate charges of criminal misconduct or to consider the filing of criminal complaints;

6. To consider the purchase, exchange, lease or value of real property if the chair declares that an open meeting may have a detrimental effect on the negotiating position of the public body;

7. To comply with, or act under the authority of, any general or special law or federal grant-in-aid requirements;

8. To consider or interview applicants for employment or appointment by a preliminary screening committee if the chair declares that an open meeting will have a detrimental effect in obtaining qualified applicants; provided, however, that this clause shall not apply to any meeting, including meetings of a preliminary screening committee, to consider and interview applicants who have passed a prior preliminary screening;

9. To meet or confer with a mediator, as defined in section 23C of chapter 233, with respect to any litigation or decision on any public business within its jurisdiction involving another party, group or entity, provided that:

(i) any decision to participate in mediation shall be made in an open session and the parties, issues involved and purpose of the mediation shall be disclosed; and

(ii) no action shall be taken by any public body with respect to those issues which are the subject of the mediation without deliberation and approval for such action at an open session; or

10. to discuss trade secrets or confidential, competitively-sensitive or other proprietary information provided in the course of activities conducted by a governmental body as an energy supplier under a license granted by the department of public utilities pursuant to section 1F of chapter 164, in the course of activities conducted as a municipal aggregator under section 134 of said chapter 164 or in the course of activities conducted by a cooperative consisting of governmental entities organized pursuant to section 136 of said chapter 164, when such governmental body, municipal aggregator or cooperative determines that such disclosure will adversely affect its ability to conduct business in relation to other entities making, selling or distributing electric power and energy.

(b) A public body may meet in closed session for 1 or more of the purposes enumerated in subsection (a) provided that:

1. the body has first convened in an open session pursuant to section 21;

2. a majority of members of the body have voted to go into executive session and the vote of each member is recorded by roll call and entered into the minutes;

3. before the executive session, the chair shall state the purpose for the executive session, stating all subjects that may be revealed without compromising the purpose for which the executive session was called;

4. the chair shall publicly announce whether the open session will reconvene at the conclusion of the executive session; and

5. accurate records of the executive session shall be maintained pursuant to section 23.

## **SECTION 22. [MINUTES, RECORDS]**

(a) A public body shall create and maintain accurate minutes of all meetings, including executive sessions, setting forth the date, time and place, the members present or absent, a summary of the discussions on each subject, a list of documents and other exhibits used at the meeting, the decisions made and the actions taken at each meeting, including the record of all votes.

(b) No vote taken at an open session shall be by secret ballot. Any vote taken at an executive session shall be recorded by roll call and entered into the minutes.

(c) Minutes of all open sessions shall be created and approved in a timely manner. The minutes of an open

session, if they exist and whether approved or in draft form, shall be made available upon request by any person within 10 days.

(d) Documents and other exhibits, such as photographs, recordings or maps, used by the body at an open or executive session shall, along with the minutes, be part of the official record of the session.

(e) The minutes of any open session, the notes, recordings or other materials used in the preparation of such minutes and all documents and exhibits used at the session, shall be public records in their entirety and not exempt from disclosure pursuant to any of the exemptions under clause Twenty-sixth of section 7 of chapter 4. Notwithstanding this paragraph, the following materials shall be exempt from disclosure to the public as personnel information: (1) materials used in a performance evaluation of an individual bearing on his professional competence, provided they were not created by the members of the body for the purposes of the evaluation; and (2) materials used in deliberations about employment or appointment of individuals, including applications and supporting materials; provided, however, that any resume submitted by an applicant shall not be exempt.

(f) The minutes of any executive session, the notes, recordings or other materials used in the preparation of such minutes and all documents and exhibits used at the session, may be withheld from disclosure to the public in their entirety under subclause (a) of clause Twenty-sixth of section 7 of chapter 4, as long as publication may defeat the lawful purposes of the executive session, but no longer; provided, however, that the executive session was held in compliance with section 21.

When the purpose for which a valid executive session was held has been served, the minutes, preparatory materials and documents and exhibits of the session shall be disclosed unless the attorney-client privilege or 1 or more of the exemptions under said clause Twenty-sixth of said section 7 of said chapter 4 apply to withhold these records, or any portion thereof, from disclosure.

For purposes of this subsection, if an executive session is held pursuant to clause (2) or (3) of subsections (a) of section 21, then the minutes, preparatory materials and documents and exhibits used at the session may be withheld from disclosure to the public in their entirety, unless and until such time as a litigating, negotiating or bargaining position is no longer jeopardized by such disclosure, at which time they shall be disclosed unless the attorney-client privilege or 1 or more of the exemptions under said clause Twenty-sixth of said section 7 of said chapter 4 apply to withhold these records, or any portion thereof, from disclosure.

(g)(1) The public body, or its chair or designee, shall, at reasonable intervals, review the minutes of executive sessions to determine if the provisions of this subsection warrant continued non-disclosure. Such determination shall be announced at the body's next meeting and such announcement shall be included in the minutes of that meeting.

(2) Upon request by any person to inspect or copy the minutes of an executive session or any portion thereof, the body shall respond to the request within 10 days following receipt and shall release any such minutes not covered by an exemption under subsection (f); provided, however, that if the body has not performed a review pursuant to paragraph (1), the public body shall perform the review and release the non-exempt minutes, or any portion thereof, not later than the body's next meeting or 30 days, whichever first occurs. A public body shall not assess a fee for the time spent in its review.

## **SECTION 23. [COMPLAINTS, REMEDIES]**

(a) Subject to appropriation, the attorney general shall interpret and enforce the open meeting law.

(b) At least 30 days prior to the filing of a complaint with the attorney general, the complainant shall file a written complaint with the public body, setting forth the circumstances which constitute the alleged violation and giving the body an opportunity to remedy the alleged violation; provided, however, that such complaint shall be filed within 30 days of the date of the alleged violation. The public body shall, within 14 business days of receipt of a complaint, send a copy of the complaint to the attorney general and notify the attorney general of any remedial action taken. Any remedial action taken by the public body in response to a complaint under this subsection shall not be admissible as evidence against the public body that a violation occurred in any later administrative or judicial proceeding relating to such alleged violation. The attorney general may authorize an extension of time to the public body for the purpose of taking remedial action upon the written request of the public body and a showing of good cause to grant the extension.

(c) Upon the receipt of a complaint by any person, the attorney general shall determine, in a timely manner, whether there has been a violation of the open meeting law. The attorney general may, and before imposing any



civil penalty on a public body shall, hold a hearing on any such complaint. Following a determination that a violation has occurred, the attorney general shall determine whether the public body, 1 or more of the members, or both, are responsible and whether the violation was intentional or unintentional. Upon the finding of a violation, the attorney general may issue an order to:

- (1) compel immediate and future compliance with the open meeting law;
- (2) compel attendance at a training session authorized by the attorney general;
- (3) nullify in whole or in part any action taken at the meeting;
- (4) impose a civil penalty upon the public body of not more than \$1,000 for each intentional violation;
- (5) reinstate an employee without loss of compensation, seniority, tenure or other benefits;
- (6) compel that minutes, records or other materials be made public; or
- (7) prescribe other appropriate action.

(d) A public body or any member of a body aggrieved by any order issued pursuant to this section may, notwithstanding any general or special law to the contrary, obtain judicial review of the order only through an action in superior court seeking relief in the nature of certiorari; provided, however, that notwithstanding section 4 of chapter 249, any such action shall be commenced in superior court within 21 days of receipt of the order. Any order issued under this section shall be stayed pending judicial review; provided, however, that if the order nullifies an action of the public body, the body shall not implement such action pending judicial review.

(e) If any public body or member thereof shall fail to comply with the requirements set forth in any order issued by the attorney general, or shall fail to pay any civil penalty imposed within 21 days of the date of issuance of such order or within 30 days following the decision of the superior court if judicial review of such order has been timely sought, the attorney general may file an action to compel compliance. Such action shall be filed in Suffolk superior court with respect to state public bodies and, with respect to all other public bodies, in the superior court in any county in which the public body acts or meets. If such body or member has not timely sought judicial review of the order, such order shall not be open to review in an action to compel compliance.

(f) As an alternative to the procedure in subsection (b), the attorney general or 3 or more registered voters may initiate a civil action to enforce the open meeting law.

Any action under this subsection shall be filed in Suffolk superior court with respect to state public bodies and, with respect to all other public bodies, in the superior court in any county in which the public body acts or meets.

In any action filed pursuant to this subsection, in addition to all other remedies available to the superior court, in law or in equity, the court shall have all of the remedies set forth in subsection (b).

In any action filed under this subsection, the order of notice on the complaint shall be returnable not later than 10 days after the filing and the complaint shall be heard and determined on the return day or on such day as the court shall fix, having regard to the speediest possible determination of the cause consistent with the rights of the parties; provided, however, that orders may be issued at any time on or after the filing of the complaint without notice when such order is necessary to fulfill the purposes of the open meeting law. In the hearing of any action under this subsection, the burden shall be on the respondent to show by a preponderance of the evidence that the action complained of in such complaint was in accordance with and authorized by the open meeting law; provided, however, that no civil penalty may be imposed on an individual absent proof that the action complained of violated the open meeting law.

(g) It shall be a defense to the imposition of a penalty that the public body, after full disclosure, acted in good faith compliance with the advice of the public body's legal counsel.

(h) Payment of civil penalties under this section paid to or received by the attorney general shall be paid into the general fund of the commonwealth.

#### **SECTION 24. [INVESTIGATIONS, HEARINGS]**

(a) Whenever the attorney general has reasonable cause to believe that a person, including any public body and any other state, regional, county, municipal or other governmental official or entity, has violated the open meeting law, the attorney general may conduct an investigation to ascertain whether in fact such person has violated the open meeting law. Upon notification of an investigation, any person, public body or any other state, regional, county, municipal or other governmental official or entity who is the subject of an investigation, shall make all information necessary to conduct such investigation available to the attorney general. In the event that the

person, public body or any other state, regional, county, municipal or other governmental official or entity being investigated does not voluntarily provide relevant information to the attorney general within 30 days of receiving notice of the investigation, the attorney general may: (1) take testimony under oath concerning such alleged violation of the open meeting law; (2) examine or cause to be examined any documentary material of whatever nature relevant to such alleged violation of the open meeting law; and (3) require attendance during such examination of documentary material of any person having knowledge of the documentary material and take testimony under oath or acknowledgment in respect of any such documentary material. Such testimony and examination shall take place in the county where such person resides or has a place of business or, if the parties consent or such person is a nonresident or has no place of business within the commonwealth, in Suffolk county.

(b) Notice of the time, place and cause of such taking of testimony, examination or attendance shall be given by the attorney general at least 10 days prior to the date of such taking of testimony or examination.

(c) Service of any such notice may be made by: (1) delivering a duly-executed copy to the person to be served or to a partner or to any officer or agent authorized by appointment or by law to receive service of process on behalf of such person; (2) delivering a duly-executed copy to the principal place of business in the commonwealth of the person to be served; or (3) mailing by registered or certified mail a duly-executed copy addressed to the person to be served at the principal place of business in the commonwealth or, if said person has no place of business in the commonwealth, to his principal office or place of business.

(d) Each such notice shall: (1) state the time and place for the taking of testimony or the examination and the name and address of each person to be examined, if known and, if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs; (2) state the statute and section thereof, the alleged violation of which is under investigation and the general subject matter of the investigation; (3) describe the class or classes of documentary material to be produced thereunder with reasonable specificity, so as fairly to indicate the material demanded; (4) prescribe a return date within which the documentary material is to be produced; and (5) identify the members of the attorney general's staff to whom such documentary material is to be made available for inspection and copying.

(e) No such notice shall contain any requirement which would be unreasonable or improper if contained in a subpoena duces tecum issued by a court of the commonwealth or require the disclosure of any documentary material which would be privileged, or which for any other reason would not be required by a subpoena duces tecum issued by a court of the commonwealth.

(f) Any documentary material or other information produced by any person pursuant to this section shall not, unless otherwise ordered by a court of the commonwealth for good cause shown, be disclosed to any person other than the authorized agent or representative of the attorney general, unless with the consent of the person producing the same; provided, however, that such material or information may be disclosed by the attorney general in court pleadings or other papers filed in court.

(g) At any time prior to the date specified in the notice, or within 21 days after the notice has been served, whichever period is shorter, the court may, upon motion for good cause shown, extend such reporting date or modify or set aside such demand or grant a protective order in accordance with the standards set forth in Rule 26(c) of the Massachusetts Rules of Civil Procedure. The motion may be filed in the superior court of the county in which the person served resides or has his usual place of business or in Suffolk county. This section shall not be applicable to any criminal proceeding nor shall information obtained under the authority of this section be admissible in evidence in any criminal prosecution for substantially identical transactions.

## **SECTION 25. [REGULATIONS, LETTER RULINGS, ADVISORY OPINIONS]**

(a) The attorney general shall have the authority to promulgate rules and regulations to carry out enforcement of the open meeting law.

(b) The attorney general shall have the authority to interpret the open meeting law and to issue written letter rulings or advisory opinions according to rules established under this section.

[illegible]

## TYNGSBOROUGH PLANNING BOARD

### NOTICE OF PUBLIC HEARING

Notice is hereby given that under the provision of Chapter 40A, Section 5 of the Massachusetts General Laws, the Tyngsborough Planning Board will hold a Public Hearing on **August 19, 2010** at 7:00pm at Town Hall, 25 Bryants Lane in the Community Room where it will act as a Special Permit Granting Authority as specified in Paragraph 1.16.00 of the Tyngsborough Zoning By-Law.

The purpose of the hearing is to consider the application for a Special Use Permit per Section 4.16.00 of the Tyngsborough Zoning By-Law, for the proposed installation of 6 panel antennas concealed inside the existing internal mount monopole cell tower at 56 Coburn Rd. The tower owner's title to the land is derived under deed from Henry E. Paul, Trustee dated December 21, 2000. The applicant is New Cingular Wirelss PCS, LLC, or Gin Vilante (agent) Framingham, MA. Said parcel is shown on Tyngsborough Assessors Map No. 26, as Parcel, 33

Steven Nocco  
Chairman  
Tyngsborough Planning Board

1<sup>st</sup> Publication August 5, 2010  
2<sup>nd</sup> Publication August 12, 2010

2010 JUL 26 PM 3:33  
TYNGSBOROUGH, MA.



2010 JUL 27 PM 1:42

MADEP  
TYNGSBOROUGH, MA.

*Electronic Submittal*  
July 22, 2010

Massachusetts Department of Environmental Protection  
Northeast Regional Office  
205B Lowell Street  
Wilmington, MA 01887

**Re: Method 2 Risk Characterization and  
Class A-2 Response Action Outcome**  
Mobil Facility #12369 (Formerly #01-E5Y)  
95-97 Westford Road  
Tyngsborough, Massachusetts  
RTN 3-2011257

To Whom It May Concern:

Kleinfelder, on behalf of ExxonMobil Oil Corporation (ExxonMobil), has prepared the enclosed Method 2 Risk Characterization and Class A-2 Response Action Outcome (RAO) for the above-referenced site/release tracking number (RTN). The eDEP Transaction copy of the Bureau of Waste Site Cleanup (BWSC) Form BWSC-104 has been included with this submittal. The ExxonMobil representative overseeing response actions associated with this submittal is Mr. Mike Geci, ExxonMobil, 52 Beacham Street, Everett, MA; he may be reached by telephone at (617) 381-2851.

This documentation was prepared under the direction of Mr. Bruce A. Hoskins, licensed site professional (LSP# 7109) of Kleinfelder in accordance with the applicable provisions of 310 CMR 40.0000. Based on the information contained within this report, it is the opinion of Kleinfelder that the requirements of a Class A-2 RAO have been met such that a Permanent Solution has been achieved in accordance with 310 CMR 40.1046(1).

By copy of this cover letter the requirement to notify the local Board of Health and the Chief Municipal Officer of the availability of this report at the Northeast Regional Office of MADEP has been met.

Should you have any questions, please do not hesitate to contact the undersigned at (978) 486-0060.

Sincerely,  
**KLEINFELDER**

  
Mark O. Erickson  
Project Manager

  
Bruce A. Hoskins, LSP  
Senior Project Manager

Cc: Mike Geci, ExxonMobil Oil Corporation (file)  
Mr. Warren Allgrove, 94 Kendall Rd, Tyngsborough, MA 01879  
Michael P. Gilleberto, Town Administrator, 25 Bryants Lane, Tyngsborough, MA 01879 (ltr only)  
Kerri Oun, Health Agent, 25 Bryants Lane, Tyngsborough, MA 01879 (ltr only)

107562/LITMA10R008\_A-2 RAO 07-10



COMMONWEALTH OF MASSACHUSETTS  
EXECUTIVE OFFICE OF ENERGY & ENVIRONMENTAL AFFAIRS  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
ONE WINTER STREET, BOSTON, MA 02108 617-292-5500

DEVAL L. PATRICK  
Governor

TIMOTHY P. MURRAY  
Lieutenant Governor

IAN A. BOWLES  
Secretary

LAURIE BURT  
Commissioner

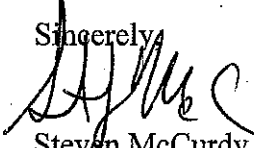
July 20, 2010

Dear Sir/Madam,

This is to inform you the solicitation period for new drinking water and wastewater projects seeking funding through the State Revolving Fund Loan Program is now open. MassDEP Municipal Services Division will be accepting Project Evaluation Forms (PEFs) for the 2011 round of funding up until August 31, 2010. In addition to funding drinking water/wastewater planning proposals, projects proposing to improve drinking water and wastewater distribution systems or upgrade existing treatment facilities via installation of energy efficiency and/or generation equipment are encouraged. Please visit our web site at <http://www.mass.gov/dep/water/approvals/srfforms.htm> for more information regarding the 2011 Project Evaluation Forms, guidance and rating forms.

If you have any questions, please do not hesitate to contact John Felix at 617-292-5523.

Sincerely,

  
Steven McCurdy,  
Division Director

MASSACHUSETTS  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
JUL 27 11:44 AM '10



Massachusetts



July 26, 2010

2010 JUL 23 11:11:54

BOARD OF SELECTMEN  
TYNGSBOROUGH, MA.

Board of Selectmen of TYNGSBOROUGH  
Town Hall, 25 Bryants Ln  
Tyngsborough, MA 01879

Dear Board of Selectmen:

As you may be aware, the Department of Conservation and Recreation (DCR) recently concluded the Forest Futures Visioning Process, a year-long public process to develop a renewed vision and long-term strategy for managing the 308,000 acres of land within DCR's State and Urban Parks system. This process - which involved forest resource experts, stakeholders, and the general public - considered the public benefits and values of forest lands and resulted in recommendations to DCR about forest stewardship practices. In April, the Patrick Administration announced plans for moving forward with the core recommendations of the Forest Futures Technical Steering Committee. This Committee's final report and the Administration's press release are available on the DCR website (please see [www.mass.gov/dcr](http://www.mass.gov/dcr)).

Among the first recommendations to be implemented is the zoning of DCR land as "Reserves," "Parklands" or "Woodlands." Reserves will allow minimal human disturbance in order to create unique wildlife habitat and will be permanently set aside from commercial timber harvesting. Parklands will focus on active recreation and will also be set aside from commercial timber harvesting. Woodlands will be actively managed to demonstrate model forestry to other landowners and to provide diverse wildlife habitat, local forest products, and other ecosystem benefits. Energy and Environmental Affairs Secretary Ian Bowles and I have committed to zoning 60 percent of DCR State and Urban Parks lands as Reserves or Parklands and 40 percent as Woodlands. This zoning could affect how DCR land in your town is managed.

As DCR develops a public process to seek input about the zoning of DCR lands this coming fall, we have created a short survey to seek input from cities and towns that will inform the process. The agency wants to ensure that communities have the opportunity to be actively engaged and share their perspectives throughout the zoning process.

You will be receiving the survey via email to [tgay@tyngsboroughma.gov](mailto:tgay@tyngsboroughma.gov) this week. DCR would be most appreciative if you could ensure that the appropriate individual completes the survey. Your town's input is important to this process and will be carefully considered. Thank you.

Sincerely,

Richard K. Sullivan Jr.  
Commissioner

COMMONWEALTH OF MASSACHUSETTS • EXECUTIVE OFFICE OF ENERGY & ENVIRONMENTAL AFFAIRS

Department of Conservation and Recreation  
251 Causeway Street, Suite 600  
Boston MA 02114-2119  
617-626-1250 617-626-1351 Fax  
[www.mass.gov/dcr](http://www.mass.gov/dcr)

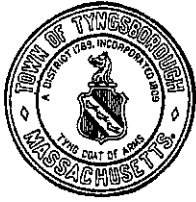


Deval L. Patrick  
Governor

Timothy P. Murray  
Lt. Governor

Ian A. Bowles, Secretary, Executive  
Office of Energy & Environmental Affairs

Richard K. Sullivan, Jr., Commissioner  
Department of Conservation & Recreation



# Town of Tyngsborough

## *Planning Board*

25 Bryants Lane

Tyngsborough, Massachusetts 01879-1003

Office: (978) 649-2300, ext. 115

Fax: (978) 649-2301

2010 JUL 29 PM 1:26

LOCAL GOVERNMENT  
TYNGSBOROUGH, MA.

### **AGENDA**

August 5, 2010

Meeting Room 1

7:00pm

#### Open Meeting

1. 41 Phalanx St. - Temporary Independent Living Quarters (T.I.L.Q.) Special Permit Application

#### **DISCUSSION**

Planning Board representative to the Community Preservation Committee (CPC)

#### **ENGINEER REPORTS**

#### **ADMINISTRATIVE**

1. Approval of Minutes: July 15, 2010
2. Sign Bills & Forms
3. New Business





# Northern Middlesex Council of Governments

## *PUBLIC MEETING NOTICE*

The Northern Middlesex Metropolitan Planning Organization (NMMPO) will meet on **Monday, August 2, 2010 at 3:00 PM**. The meeting will be held at the Northern Middlesex Council of Governments (NMCOG) office, 40 Church Street, Suite 200, Lowell, MA. The meeting agenda is provided below.

A Multi-Disciplinary

Regional Planning

Agency Serving:

Billerica

Chelmsford

Dracut

Dunstable

Lowell

Pepperell

Tyngsborough

Tyngsborough

Westford

James G. Silva  
Chair

Beverly A. Woods  
Executive Director

40 Church Street  
Suite 200  
Lowell, MA  
01852-2686  
TEL: (978) 454-8021

FAX: (978) 454-8023

www.nmcog.org

### AGENDA

- I. Welcome and Introductions
- II. Minutes of the June 21, 2010 Meeting
- III. Status report on TIP projects
- IV. Discuss programming options for the FY 2011-2014 TIP
- V. Review and release for public comment the Draft FY 2011-2014 TIP
- VI. Review and discuss and release for public comment the Draft FY 2011 UPWP
- VII. Discuss revising the Boston Urbanized Area MOU
- VIII. Discussion of TIGER II grant applications
  - a. Rt. 3/Exit 36 study in Tyngsborough and Nashua
  - b. Middlesex Turnpike Phase III in Billerica
- IX. Other Business
- X. Adjournment

**City/Town Clerks: PLEASE POST PURSUANT TO OPEN MEETING LAW**

**CHARLES J. ZAROULIS LAW OFFICES**

40 Church Street, Suite 500, Lowell, Massachusetts 01852-2686

Telephone (978) 458-4583

Facsimile (978) 937-0950

VIA FACSIMILE (978.649.2320) & USPS

July 27, 2010

Mr. Richard Lemoine, Selectman  
C/O Board of Selectmen  
Town Hall  
25 Bryants Lane  
Tyngsborough, MA 01879

**File: Tyngsborough**

**Re: Candidates' Night  
State Senatorial Election  
Public Building**

Dear Richard and Board Members:

On behalf of the Board of Selectmen, you have presented me with the question whether the Board could sponsor a candidates' night at the elementary school.

My view is that the Board may do so without violating campaign finance laws, provided that: 1) all candidates who filed are invited; and any candidate or candidates who have decided to run on "stickers" are permitted to participate; 2) no candidate shall solicit any contributions, either personally or through campaign workers, or hand out campaign material, or the like, on public property; and finally, 3) that the School Department has not promulgated any rules prohibiting campaign activities on school property.

If rules have been adopted by the School Department which regulate political activities, those regulations must be complied with by the Board and the candidates; and, of course, the school must grant permission for such a candidates' night

Please call me if you have any questions or to discuss.

Sincerely yours,

  
Charles J. Zaroulis  
Town Counsel

CJZ/jrz

*Tyngs/Candidate Night Opinion Letter*



William F. Mulligan  
Chief of Police

# Town of Tyngsborough

Police Department

20 Westford Road

Tyngsborough, Massachusetts 01879-0549



TEL: (978) 649-7504

FAX: (978) 649-2324

To: Michael Gilleberto Town Administrator BOS

From: Chief William F. Mulligan

Re: Simon Property Group

Date: July 27, 2010

On June 29 2010 I along with Captain Fred Nichols from the Nashua Police Department did a presentation on the multi-jurisdiction emergency response drill at the Pheasant Lane Mall. This was during the Boston Security Conference held at the Marriott Copley Place Hotel in Boston. I thought you and the Board would like to see the thank you letter comments, and photos they send me.

July 20, 2010

Chief William Mulligan  
Tyngsborough Police Department  
20 Westford Road  
Tyngsborough, MA 01879

Dear Chief Mulligan:

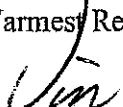
On behalf of Simon Property Group, its New England Region and the Pheasant Lane Mall we want to thank you for taking the time to participate in the Boston Security Conference. We appreciated your time and efforts, and gained considerable insight from your portion of the presentation on "Building Respected/Integrated/Responsive Law Enforcement Relationships with Mall Management" – specifically the steps involved in planning and executing the large-scale emergency drill to test Mutual Aid between multiple jurisdictions.


The feedback received was that many of the attendees in the audience felt that the presentation should have led the second day session since it specifically addressed the objective of the conference and would have led to greater dialogue between mall management and law enforcement representatives. The presentation content was so appropriate for the conference and was delivered in such a professional manner.

As is always the case, the Tyngsborough Police Department continues to demonstrate the highest level of commitment to supporting crime prevention efforts locally and specifically at Pheasant Lane Mall. We are grateful for your continued support and partnership with us and the Nashua PD. We will undoubtedly continue to reach out to you and your department as we pursue opportunities developed through the conference.

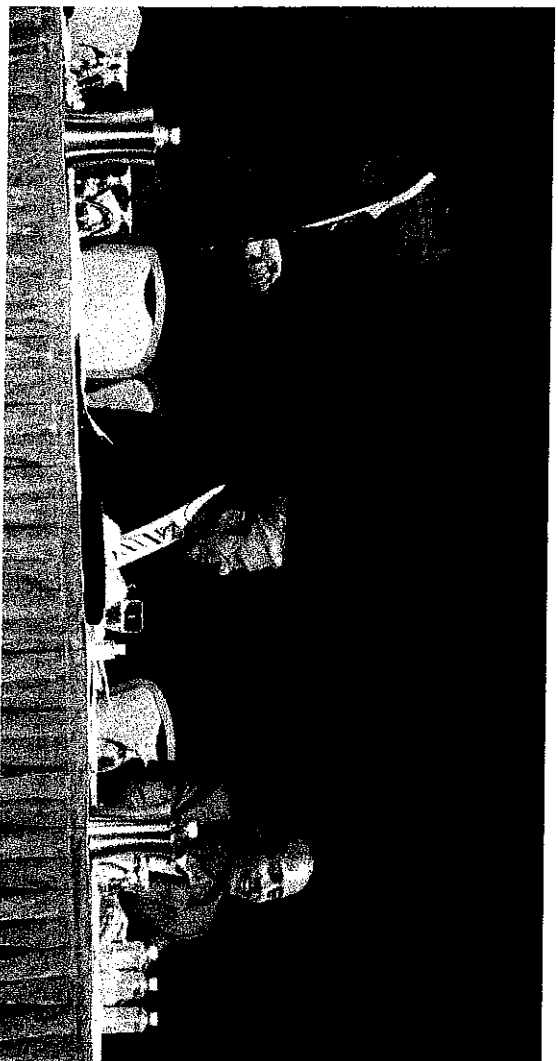
Again thank you so much for making the presentation and attending the conference representing the Tyngsborough Police Department.

Warmest Regards,

  
Vincent Cosco  
General Manager  
New England Region

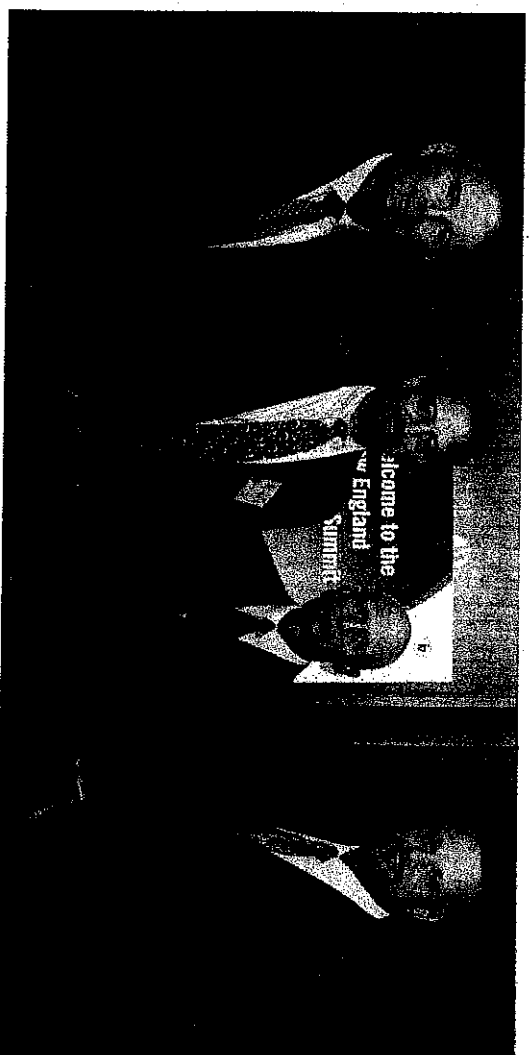
  
Ron Hanson  
Regional Senior Vice President  
Pheasant Lane Mall

## 2010 SIMON Security Summit



Local law enforcement and property managers from SIMON Property Group present "Building Effective Law Enforcement Partnerships" at the SIMON Security Summit held on June 29 in Boston, MA. Presenters here include (L-R): General Manager Vincent Cosco, Pheasant Lane Mall (Nashua, NH); Police Chief Robert Champagne, Peabody, MA; and General Manager Mark Whiting, North Shore Mall (Peabody, MA).

Security Summit presenters (L-R):  
Police Chief William Mulligan,  
Tyngsborough, MA; General Manager  
Vincent Cosco, Pheasant Lane Mall;  
Police Captain Fred Nichols, Nashua,  
NH; and Security Director Ronald Perry,  
Allied Barton Security Services.



## 2010 SIMON Security Summit



Police Chief William Mulligan, Tyngsborough, MA, and Police Captain Fred Nichols (Nashua, NH) take turns presenting and then answering questions about a large-scale multi-jurisdiction emergency response drill held at Pheasant Lane Mall. The New England Security Summit took place on June 29 in Boston, MA.

**Westford Road Development, LLC**  
315 Middlesex Road, Unit 3  
Tyngsboro, Massachusetts 01879

2010 JUL 25 AM 8:58

BOARD OF SELECTMEN  
TYNGSBOROUGH, MA

July 20, 2010

Board of Selectmen  
Town Offices  
25 Bryants Lane  
Tyngsborough, MA 01879

Re: Westford Road Development Project – Potash Kiln

Dear Members of the Board:

We are writing once again to update you on the status of the proposed development of the land currently owned by Sycamore Networks Real Estate, LLC ("Sycamore") located in the triangle formed by Westford and Middlesex Roads (the "Property").

As you may know, we have initiated conversations with the Tyngsborough Historical Commission in order to implement an acceptable plan to preserve the Potash Hill Chimney Site, which is located on the Property.

The Potash Hill Chimney Site (MHC# TYN-HA-1) is included in the Massachusetts Historical Commission's ("MHC") Inventory of Historic and Archaeological Assets of the Commonwealth and has been identified as an asset of significance worthy of preservation. The Potash Hill Chimney Site was described in a letter dated May 7, 2001, written by Brona Simon, State Archaeologist and Deputy State Historic Preservation Officer, as follows:

*"The Potash Hill Chimney Site consists of a well-preserved chimney built of uncut, dry-laid stone with a cut granite lintel built against a massive glacial erratic (boulder). Subsurface archaeological deposits ... have been identified. The structure is an interesting and rare construction, evidencing a vernacular architectural style that made use of a natural boulder feature...The site is a physical reminder of an historically important but now vanished occupation and "useful art," that Archaeological deposits at the site could provide important information on the domestic activities and the economic position of the occupant. The Potash Hill Chimney Site meets the eligibility criteria (36 CFR Part 60) for listing in the National Register of Historic Places under Criterion A, C and D at the local and state levels of significance."*

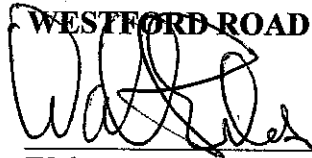
We recognize the historical importance of the Potash Hill Chimney Site, as well as its significance to the Town of Tyngsborough and the Commonwealth of Massachusetts, and desire to secure its preservation through cooperation with the appropriate state and local authorities.

Accordingly, we have presented a draft agreement to the Tyngsborough Historical Commission whereby we propose to deed a certain lot on which the Potash Hill Chimney Site is located to the Town of Tyngsborough Historical Commission. For your convenience, we have enclosed a copy of the proposed agreement.

Of course, should you have any questions, we would be happy to discuss this matter with the Board at your convenience. We look forward to continuing to work with you in conjunction with this project.

Respectfully:

**WESTFORD ROAD DEVELOPMENT, LLC**

  
\_\_\_\_\_

Walter K. Eriksen, Jr.

Enclosures



## AGREEMENT

This Agreement is made as of this \_\_\_\_ day of \_\_\_\_\_, 2010, by and between the Town of Tyngsborough Historical Commission (the "Commission") and Westford Road Development, LLC (the "Developer").

## RECITALS

WHEREAS, the Developer has entered into an agreement with Sycamore Networks Real Estate, LLC ("Sycamore") to acquire a certain parcel of land in Tyngsborough, Massachusetts, consisting of approximately 102 acres, more or less, situated easterly of Westford Road and southerly of Middlesex Road, said parcel being more particularly described in a deed recorded with the Middlesex North District Registry of Deeds at Book 11142, Page 333 (the "Parcel");

WHEREAS, if, as and when the Developer consummates the transaction to purchase the Parcel from Sycamore, the Developer seeks to implement a plan to preserve the Potash Hill Chimney Site (the "Kiln Site"), which is located on the Parcel.

WHEREAS, the Kiln Site (MHC# TYN-HA-1) is included in the Massachusetts Historical Commission's Inventory of Historic and Archaeological Assets of the Commonwealth and has been identified as an asset of significance worthy of preservation;

WHEREAS, the Developer and the Commission recognize the historical importance of the Kiln Site, as well as its significance to the Town of Tyngsborough and the Commonwealth of Massachusetts, and desire to secure its preservation;

NOW THEREFORE, for good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the Commission and the Developer hereby agree as follows:

1. If, as and when the Developer consummates the transaction with Sycamore and acquires title to the Parcel, the Developer shall convey to the Commission, and the Commission shall accept, the lot on which the Kiln Site is located (an area consisting of approximately 35,337 square feet and referred to as "Green Space A" on the plan of land entitled "Definitive Plan, Vesper Executive Park, Subdivision of Land in Tyngsborough, Mass." dated December 11, 1987, revised March 1, 1988, prepared by Dana F. Perkins & Assoc., Inc., and recorded with the Middlesex North District Registry of Deeds in Plan Book 166, Plan 53). A proposed deed is attached hereto as Exhibit A.
2. Notwithstanding the above, the Commission and the Developer agree that the exact and final area and bounds of the parcel to be conveyed to the Commission may be modified pending final engineering and approvals of the plans associated with Westford Road Development.
3. The Developer's obligation to convey the Kiln Site under this Agreement is expressly contingent upon the Developer consummating its agreement with Sycamore and taking title to the Parcel.

4. In no event shall this Agreement, or any notice or memorandum hereof, be recorded with any registry of deeds or other public office unless and until such time as (i) the Developer takes title to the Parcel, and (ii) the Developer and the Commission agree, in a mutually executed written instrument, that it is in the best interests of the parties hereto to record this Agreement or a notice or memorandum hereof.
5. This Agreement shall be binding upon and inure to the benefit of the heirs, executors, administrators, successors and assigns of the parties hereto.
6. Notwithstanding any provision of this Agreement to the contrary, the Commission expressly agrees that no agent, employee, officer, manager or member of the Developer shall have any personal liability for any of the obligations of the Developer under this Agreement.
7. This Agreement shall be construed and interpreted in accordance with the laws of the Commonwealth of Massachusetts.
8. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original and all collectively but one and the same instrument. This Agreement may only be modified or amended by a written instrument executed by all parties hereto.
9. This Agreement terminates and supersedes all prior understandings or agreements on the subject matter hereof.

Executed as a sealed instrument as of the date first written above.

TOWN OF TYNGSBOROUGH  
HISTORICAL COMMISSION

WESTFORD ROAD DEVELOPMENT, LLC

\_\_\_\_\_  
Walter K. Eriksen, Jr., Manager

\_\_\_\_\_  
James Patierno, Manager

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
A Majority Thereof

EXHIBIT A

PROPOSED QUITCLAIM DEED

WESTFORD ROAD DEVELOPMENT, LLC, a Massachusetts limited liability company, having a notice address for business at 315 Middlesex Road, Unit 3, Tyngsborough, Massachusetts 01879

in consideration of Ten and 00/100 (\$10.00) Dollars, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged

hereby grants to the TOWN OF TYNGSBOROUGH HISTORICAL COMMISSION, having a notice address of 252 Middlesex Road, Tyngsborough, Massachusetts 01879

**with QUITCLAIM COVENANTS**

The land in Tyngsborough, Middlesex County, Massachusetts being shown as "Green Space A" on a plan of land entitled "Definitive Plan, Vesper Executive Park, Subdivision of Land in Tyngsborough, Mass." dated December 11, 1987, revised March 1, 1988, prepared by Dana F. Perkins & Assoc., Inc., and recorded with the Middlesex North District Registry of Deeds in Plan Book 166, Plan 53. Said lot contains Thirty Five Thousand Three Hundred Thirty-Seven (35,337) square feet, more or less and contains the area commonly known as the Potash Hill Chimney Site (MHC# TYN-HA-1), which is included in the Massachusetts Historical Commission's Inventory of Historic and Archaeological Assets of the Commonwealth.

**[Notwithstanding the above, the area and bounds of the parcel to be conveyed to the Commission may be modified prior to conveyance pending final engineering and approvals of the plans associated with Westford Road Development.]**

Being a portion of the premises conveyed by deed of Sycamore Networks Real Estate, LLC to Westford Road Development, LLC dated \_\_\_\_\_, 2010, and recorded with the Middlesex North District Registry of Deeds in Book \_\_\_\_\_, Page \_\_\_\_\_.

Executed as a sealed instrument this \_\_\_\_ day of \_\_\_\_\_, 2010.

WESTFORD ROAD DEVELOPMENT, LLC

By: **DRAFT**  
Walter K. Eriksen, Jr., Member

COMMONWEALTH OF MASSACHUSETTS

\_\_\_\_\_, ss: \_\_\_\_\_, 2010

On this \_\_\_\_ day of \_\_\_\_\_, 2010, before me, the undersigned notary public, personally appeared Walter K. Eriksen, Jr., Manager of Westford Road Development, LLC proved to me through satisfactory evidence of identification, which was a drivers license, to be the person whose name is signed on the preceding or attached document, and who swore or affirmed to me that he signed it voluntarily for its stated purpose on behalf of Westford Road Development, LLC, a Massachusetts limited liability company.

\_\_\_\_\_  
Official seal signature and seal of Notary Public  
My commission expires:

CHARLES J. ZAROULIS LAW OFFICES

40 Church Street  
Suite 500  
Lowell, MA 01852-2686  
978.458.4583  
Tel: 978.458.4583  
Fax: 978.937.0950

2010 JUL 23 PM 12:02  
RECEIVED  
TYNGSBOROUGH, MA.

July 21, 2010

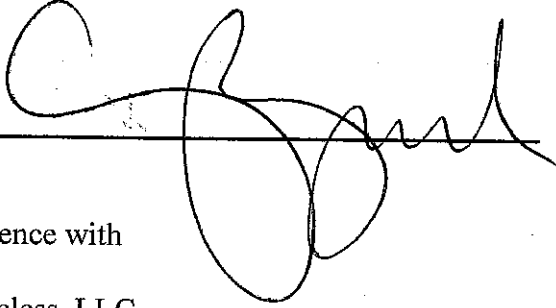
Board of Selectmen

Town Hall  
25 Bryants Lane  
Tyngsborough, MA 01879

**Date of Services: June 2010**

In Reference To: Monthly Report

Legal Services



6/1/10 Draft Decision  
Telephone Conference with  
P. Berman  
- Tyngsboro Wireless, LLC  
A/K/A TW, LLC  
Cell Tower - Wilson Way  
Appeals Board  
Planning Board

Review Documents  
E-mail to M. Gilleberto  
- Thirsty's Pub  
Violations  
Board of Selectmen

6/2/10 Review Police Reports  
Draft Notice  
Two E-mails to T. Gay  
- Thirsty's Pub  
Violations  
Board of Selectmen

- 6/2/10 E-Mail to T. Gay  
- Street Acceptance  
Board of Selectmen
- 6/3/10 Telephone Conference with  
T. Gay  
Telephone Conference with  
M. Gilleberto  
E-mail Notice  
Fax Rules and Statutes  
E-mail Documents to  
Atty. P. Nicosia  
- Thirsty's Pub  
Violations  
Board of Selectmen
- Telephone Conference with  
M. Gilleberto  
- Landscaping, Etc.  
Town Administrator
- 6/4/10 Telephone Conference with  
P. Berman  
- Tyngsboro Wireless, LLC  
A/K/A TW, LLC  
Cell Tower - Wilson Way  
Appeals Board  
Planning Board
- Telephone Conference with  
Inspector General's Office  
- Uniform Procurement Law  
Town Administrator
- 6/7/10 Telephone Conference with  
M. Gilleberto  
- Procurement Law  
- Thirsty's Pub  
Violations  
Town Administrator
- Review Minutes  
- Tyngsboro Wireless, LLC

A/K/A TW, LLC  
Cell Tower - Wilson Way  
Appeals Board  
Planning Board

6/8/10 Telephone Conference with  
P. Berman  
- Tyngsboro Wireless, LLC  
A/K/A TW, LLC  
Cell Tower - Wilson Way  
Appeals Board  
Planning Board

Telephone Conference with  
M. Gilleberto  
E-mail to Atty. P. Nicosia  
Research  
- Thirsty's Pub  
Violation  
Board of Selectmen

Preliminary Review of Documents  
- LaCourse Family Trust  
Zoning &  
Building Code Violations  
Building Department

Telephone Conferences with  
M. Gilleberto  
- Trinity EMS, Inc.  
Ambulance Agreement  
Board of Selectmen

6/9/10 Preliminary Review of Documents  
Telephone Conference with  
M. Gilleberto  
- Trinity EMS, Inc.  
Ambulance Agreement  
Board of Selectmen

Preliminary Review of Documents  
E-mail to T. Gay  
- Westford Road

Development, LLC  
Solar Energy Cell Farm  
Special Permit  
Board of Selectmen

6/9/10 Telephone Conference with  
M. Gilleberto  
- Thirsty's Pub  
Violations  
- Trinity EMS, Inc.  
Ambulance Contract  
Town Administrator

6/10/10 Office Conference with  
M. Gilleberto  
- Thirsty's Pub  
Violations  
- Trinity EMS, Inc.  
Ambulance Contract  
Town Administrator

6/11/10 Telephone Conference with  
M. Dupell  
- Lantry, Thomas  
v. Town of Tyngsborough ZBA  
Superior Court MICV2006-02491-L  
Board of Appeals

Telephone Conference with  
M. Gilleberto & Atty. P. Nicosia  
- Thirsty's Pub  
Violation  
Board of Selectmen

Telephone Conference with  
Atty. K. Eriksen  
T-Mobile USA, Inc.  
50 Coburn Road  
Wireless Communications Facility  
Variance & Special Permit  
Special Use Permit  
Planning Board  
Planning Board

6/11/10 Draft Stipulation,  
Memorandum of Law,  
& Hearing Procedure  
Telephone Conference with  
Chief W. Mulligan  
- Thirsty's Pub  
Violations  
Board of Selectmen

6/12/10 Prepare Stipulation  
& Memorandum of Law  
- Thirsty's Pub  
Violations  
Board of Selectmen

6/13/10 Review Zoning By-Laws  
& Minutes  
Draft Decision  
Prepare Memorandum  
- Westford Road  
Development, LLC  
Solar Energy Cell Farm  
Special Permit  
Board of Selectmen

6/14/10 Telephone Conference with  
M. Gilleberto  
- Miscellaneous  
Town Administrator

Telephone Conference with  
T. Gay  
Telephone Conference with  
P. Berman  
Telephone Conference with  
Attorney General's Office  
Review Documents  
from Atty. S. Eriksen,  
Town Clerk, Etc.  
Three Faxes  
- Special Town Meeting  
Article 8  
Board of Selectmen



6/14/10 Telephone Conference with  
Atty. P. Nicosia  
Prepare for Hearing  
Attend Hearing  
- Thirsty's Pub  
Violations  
Board of Selectmen

6/15/10 Letter to Attorney General  
- Special Town Meeting  
March 2, 2010  
Article 8  
Board of Selectmen

Research  
M.G.L. c. 30, s. 39  
- Highway Department  
Services  
Town Administrator

Draft Decision  
- Thirsty's Pub  
Violations  
Board of Selectmen

Two Telephone Conferences with  
M. Gilleberto  
- Trinity EMS, Inc.  
Ambulance Agreement  
Town Administrator

Review Decision  
- Tyngsboro Wireless, LLC  
A/K/A TW, LLC  
Cell Tower - Wilson Way  
Appeals Board  
Planning Board

Telephone Conference with  
M. Gilleberto  
- Thirsty's Pub  
Violations  
Board of Selectmen

6/16/10 Telephone Conference with  
T. Gay  
- Thirsty's Pub  
Violations  
Board of Selectmen

Research  
Telephone Conference with  
Attorney General  
Draft Letter  
- Public Bidding  
Highway  
Town Administrator

E-Mail to T. Gay  
- Street Acceptance  
Board of Selectmen

E-Mail to M. Gilleberto  
- Educational Programs  
Town Administrator

Letter to Board of Selection  
& Planning Board  
- Zoning By-Laws  
Board of Selectmen

Telephone Conference with  
Atty. Eriksen  
- Article 8  
Special Town Meeting of  
March 2, 2010  
Board of Selectmen

6/17/10 Prepare Decision  
Telephone Conference with  
P. Berman  
Telephone Conference with  
T. Gay  
- Tyngsboro Wireless, LLC  
A/K/A TW, LLC  
Cell Tower - Wilson Way  
Appeals Board  
Planning Board

6/17/10 Telephone Conference with  
T. Gay  
Draft Decision  
Letter to Board of Selectmen  
- Thirsty's Pub  
Violations  
Board of Selectmen

Telephone Conference with  
M. Morro  
- Schaefer, Anne  
Harassment & Threats  
Conservation Commission

Review Correspondence  
& Documents  
Draft Letter  
- Forescore Properties, LLC  
11 Westford Road  
Zoning Violation  
Building Department

Review Agreement  
E-mail to M. Gillebert  
- Greenscape Land and Design  
Recreational Field Maintenance  
205 Westford Road  
Agreement  
Town Administrator

Telephone Conference with  
M. Gilleberto  
- Westford Road  
Development, LLC  
Decision  
Board of Selectmen

6/18/10 Draft Opinion  
- Westford Road  
Development, LLC  
Decision  
Board of Selectmen

6/18/10 Review Agreement  
Research  
Draft Opinion  
- Westford Road  
Development, LLC  
Sycamore Networks  
Real Estate, LLC  
Release of 1987 Development  
Agreement  
Board of Selectmen

6/19/10 Review Contract, Forms  
& Documents  
Message to M. Gilleberto  
- Trinity EMS, Inc.  
Ambulance Agreement  
Board of Selectmen

6/21/10 Telephone Conference with  
M. Gilleberto  
- Trinity EMS, Inc.  
Ambulance Agreement  
- Westford Road  
Development, LLC  
Sycamore Networks  
Real Estate, LLC  
Release of 1987 Development  
Agreement  
Board of Selectmen

Telephone Conference with  
M. Gilleberto  
Review Proposal  
E-mail to M. Gilleberto  
- Trinity EMS, Inc.  
Ambulance Agreement  
Board of Selectmen

Revise Decision  
E-mail to T. Gay  
- Thirsty's Pub  
Violations  
Board of Selectmen

6/22/10 Telephone Conference with  
M. Gilleberto  
- Greenscape Land and Design  
Recreational Field Maintenance  
205 Westford Road  
Agreement  
Town Administrator

E-Mail to P. Berman  
- Tyngsboro Wireless, LLC  
A/K/A TW, LLC  
Cell Tower - Wilson Way  
Appeals Board  
Planning Board

E-Mail to M. Gilleberto  
- Thirsty's Pub  
Violations  
Board of Selectmen

6/23/10 Revise Agreement  
- Trinity EMS, Inc.  
Ambulance Agreement  
Board of Selectmen

Telephone Conference with  
Atty. S. Eriksen  
- Westford Road  
Development, LLC  
Solar Energy Cell Farm  
Special Permit  
Board of Selectmen

Letter to T. Gay  
Review Regulations  
- Special Permit Regulations  
Board of Selectmen

Telephone Conference with  
M. Morro  
- Schaefer, Anne  
Harassment & Threats  
Conservation Commission

6/24/10 Redraft Agreement  
E-mail to M. Gilleberto  
- Greenscape Land and Design  
Recreational Field Maintenance  
205 Westford Road  
Agreement  
Town Administrator

Review Correspondence  
- Schaefer, Anne  
Harassment & Threats  
Conservation Commission

6/25/10 Telephone Conference with  
M. Gilleberto  
Revise Agreement  
- Trinity EMS, Inc.  
Ambulance Agreement  
Town Administrator

Revise Agreement  
E-mail to M. Gilleberto  
- Greenscape Land and Design  
Recreational Field Maintenance  
205 Westford Road  
Agreement  
Town Administrator

Telephone Conference with  
M. Gilleberto  
- Thirsty's Pub  
Violations  
Board of Selectmen

6/28/10 Telephone Conference with  
M. Gilleberto & Atty. P. Nicosia  
- Thirsty's Pub  
Violations  
Board of Selectmen

Two Telephone Conferences with  
with M. Gilleberto  
- Trinity EMS, Inc.  
Ambulance Agreement  
Town Administrator

6/28/10 Two Telephone Conferences with  
P. Berman  
E-mail to P. Berman  
Telephone with Atty. S. Eriksen  
- Tyngsboro Wireless, LLC  
A/K/A TW, LLC  
Cell Tower - Wilson Way  
Appeals Board  
Planning Board

6/29/10 Several Telephone Conferences  
with M. Gilleberto &  
Atty. P. Nicosia  
Draft Statement  
- Thirsty's Pub  
Violations  
Board of Selectmen

Revise Agreement  
E-mail to Parties  
- Trinity EMS, Inc.  
Ambulance Agreement  
Town Administrator

Letter to D. & K. Toner  
- Toner, David M.  
& Kathleen  
Zoning By-Law  
& State Building Code Violation  
241 Sherburne Avenue  
Building Department

Telephone Conference with  
Atty. S. Eriksen  
E-mail to P. Berman  
- Tyngsboro Wireless, LLC  
A/K/A TW, LLC  
Cell Tower - Wilson Way  
Appeals Board  
Planning Board

E-Mail to M. Gilleberto  
Review Registry of Deeds Records  
- Westford Road  
Development, LLC  
Sycamore Networks

Real Estate, LLC  
Release of 1987 Development  
Agreement  
Board of Selectmen

6/30/10 Telephone Conference with  
M. Gilleberto  
- Trinity EMS, Inc.  
Ambulance Agreement  
- Thirsty's Pub  
Violations  
Town Administrator

Telephone Conference with  
P. Berman  
Review Decision  
- Tyngsboro Wireless, LLC  
A/K/A TW, LLC  
Cell Tower - Wilson Way  
Appeals Board  
Planning Board

Revise E-mail to M. Gilleberto  
& Atty. S. Eriksen  
- Westford Road Development, LLC  
Vesper Property Release  
Board of Selectmen

Revise Decision  
E-mail to T. Gay  
- Westford Road  
Development, LLC  
Solar Energy Cell Farm  
Special Permit  
Board of Selectmen

Telephone Conference with  
Alcoholic Beverages  
Control Commission  
Telephone Conference with  
M. Gilleberto  
- Thirsty's Pub  
& the ABCC  
Board of Selectmen





2010 JUL 26 11:11:33

COMMUNICATIONS SECTION  
TYNGSBOROUGH, MA.

July 22, 2010

Mr. Michael Gilleberto  
Town Administrator  
Town of Tyngsborough  
25 Bryants Lane  
Tyngsborough, MA 01879

Dear Mr. Gilleberto,

Several months ago Green Planets Products, LLC approached Schenectady County to introduce them to a new line of 100% biodegradable products. As the official distributor for the innovative Green Earth Technologies, Green Planet Products, LLC offered to supply the county with the first 100% biodegradable motor oil to hit the market. Excited about this interesting initiative, Schenectady County accepted the offer and began testing its fleet of vehicles with the American grown, environmentally friendly oil. Since then, the Town of Green Island, City of Oneonta, Capital District Transportation Authority (CDTA) and the City of Pittsfield, MA have begun to implement our products as a new ecological measure into their fleet operations.

The greening of America will happen if more municipalities commit to preserving the environment by initiating local sustainability efforts to serve as models for other local and state governments. As the City of Pittsfield progresses towards becoming a green community, we hope to see more and more municipalities across the nation adopt similar ecological measures and environmental policies.

I have attached a power point presentation and a recent news release for your information. For a full list of all our products and ordering information, please visit our web site at [www.greenplanetproductsllc.com](http://www.greenplanetproductsllc.com) and further information on Green Earth Technologies is available at [www.getg.com](http://www.getg.com).

Please feel free to contact me to discuss ways that we can work with you to achieve your environmental goals, reduce our dependence on foreign oil, and greatly reduce the impact on the Earth for our children and the generations to come.

Sincerely,

S. Lee Bowden  
President



[HOME : Details](#)[«Back](#)

## Pittsfield First in the Commonwealth to use new GREEN Motor Oil

Pittsfield-Mayor James Ruberto is pleased to announce that the City of Pittsfield is the first municipality in Massachusetts to be using G-Oil, a grade A automotive oil, made from beef tallow, in all municipal light trucks and small engines.

"As part of our widespread efforts to be both environmentally and fiscally responsible, we are using this terrific new product that is 100% biodegradable, and petroleum free," states the mayor. "And that horrible oil spill down in the Gulf of Mexico reminds us all how we need to find alternatives for fossil fuels."

The City purchased the oil from Green Earth Technologies, Inc. According to David Buicko of GET, Inc. "the price of our motor oil is a little less than traditional motor oil and it works much better. I've have it my car and have not had to change the oil for 12,000 miles."

According to GET Inc website, G-OIL is the world's first bio-based motor oil to pass the engine test criteria for The American Petroleum Institute (API) SM Certification. Green Earth Technologies' G-OIL is not a re-refined or recycled oil, but a blend of nature's American grown base oils, including beef tallow, with nanotechnology resulting in a bio-based full synthetic motor oil. These saturated fats, whose molecular single-bond carbon chains are similar to common petroleum oils, have no harsh effects on the environment, and cut dependence on foreign oil and offshore drilling.

[Municipal Links](#)[Business Links](#)[Visitor's Links](#)[Special Events Links](#)[Parking in Pittsfield](#)[Calendar of Events](#)[Latest News](#)

City Hall

# CDTA trying new 'green' motor oil

BY STEPHEN WILLIAMS  
Gazette Reporter

It looks just like any other motor oil when it's being poured into an engine, but the Capital District Transportation Authority is trying something a little different as a lubricant: a biodegradable non-petroleum "green" motor oil.

CDTA will be giving the new product, G-Oil Engine Oil, a try in its fleet of about 40 non-bus support vehicles.

The oil, which actually has a slight greenish tinge, is made by a Connecticut company from biodegradable animal fats — and backers say using it could make a small contribution to cutting the nation's reliance on petroleum.

"There's a little for us to gain, and nothing for us to lose," said CDTA Executive Director Carm

Basile.

The regional mass-transit agency will do tests as vehicles are brought in for future oil changes, but after the first two months of using G-Oil, the new product seems to be working out well, CDTA officials said.

"We've had no problems with the vehicles, no issues with engine performance," said Dennis Dugan, CDTA's director of maintenance.

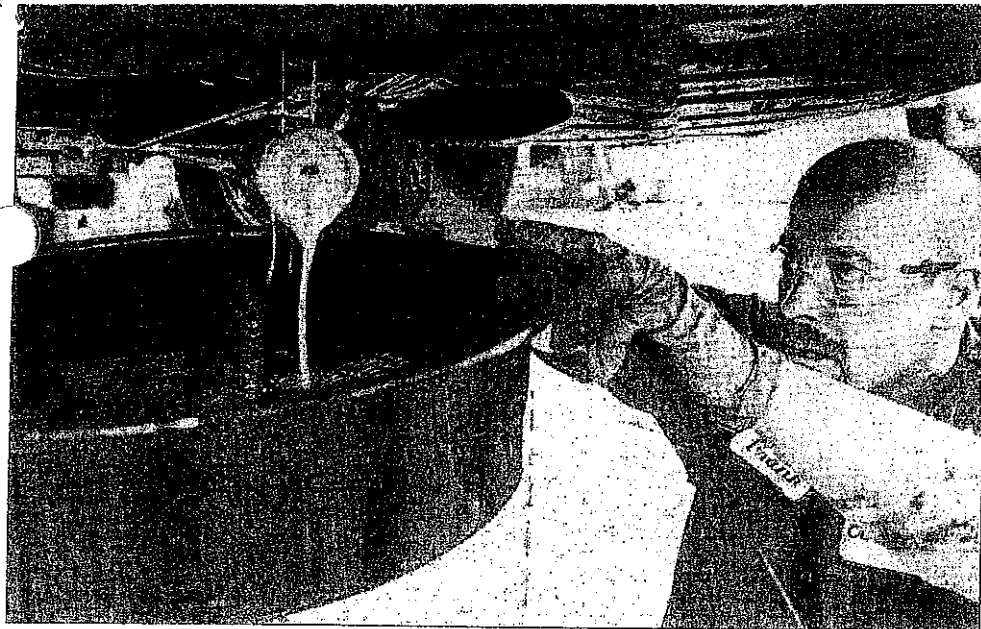
He said the oil, rated 5W-30, isn't suitable for use in CDTA's heavy diesel bus fleet, but it is going to be used in all authority-owned support vehicles: the cars, light trucks and SUVs that are driven by CDTA's managers, road supervisors, garage mechanics, and other employees at CDTA's main garage and administrative offices at 110 Watervliet

See OIL, page B5



CDTA mechanic Tim Schelling prepares to change the oil on the alternative fuels vehicle behind him in the Watervliet Avenue garage in Albany on Thursday.

PETER R. BARBER/  
GAZETTE  
PHOTOGRAPHER



CDTA mechanic Frank Mancini changes the oil filter on an alternative fuels vehicle at the transportation company's garage in Albany on Thursday.

PETER R. BARBER/  
GAZETTE  
PHOTOGRAPHER

## Oil: Product distributed by Rotterdam firm

Continued from page B1

Ave.

CDTA expects to use enough of the oil to have bought a 55-gallon drum of it, roughly a three-month supply.

The "green" oil has been certified as meeting motor oil standards by the American Petroleum Institute.

But unlike conventional oil, the manufacturer says this oil would break down in the environment in 28 days if there were a spill, and it causes less pollution as it burns.

### ECO-FRIENDLY EFFORTS

Basile said the lubricant slips nicely into CDTA's efforts to be eco-friendly.

"As an environmentally conscious organization, we will continue to increase our efforts to 'green' our system by adopting renewable and clean energy products and programs that advance our green mission, support an energy-independent future and benefit our customers and community," he said.

The biodegradable oil is distributed by Green Planet Products, a Galesi Group company with its East Coast warehousing operations in the Rotterdam Industrial Park.

Green Planet Products President S. Lee Bowden said the oil's manufacturer, Green Earth Technologies of Stamford, Conn., has developed a method that uses nanotechnology to convert beef fats into a carbon form that imitates petroleum. The company began marketing an oil suitable for two-cycle engines about three years ago, and then about six months ago had an oil certified for use in standard auto engines.

Green Planet Products says its oil is both more environmentally benign than petroleum-based oil and is from a plentiful domestic source — slaughtered beef cattle.

"It reduces dependence on for-

**'We've had no problems with the vehicles, no issues with engine performance.'**

**DENNIS DUGAN**

CDTA director of maintenance

eign oil, and with what's going on right now in the Gulf of Mexico that's all the more important," Bowden said. "The source is readily available."

An average slaughtered beef animal has enough fat left over, about 200 pounds, to be converted into 110 quarts of the "green" oil, Bowden said — so there's no risk of an immediate shortage of the raw material.

"Doing the math, there's plenty," Bowden said.

Bowden said the tallow-based product is going to appeal to companies and organizations that have vehicle fleets they maintain and are trying to reduce their environmental impacts. CDTA has an ongoing "Go Green" initiative. It has bought dozens of electric-diesel hybrid buses in recent years, and purchased hybrids and even hydrogen-powered vehicles for its support fleet.

Those established initiatives make using the motor oil worth a try, Basile said.

"If the green oils prove to provide clean energy benefits, consistently perform well and are cost-effective, we will continue to use them in our daily maintenance operations," he said.

### COSTS A LITTLE MORE

The "green" oil is a little more expensive than standard motor oil — about \$7 per gallon at the government wholesale price, versus \$5 per gallon for standard oil. Bowden said it's still less expensive than synthetic oils, though.

With CDTA using about 200 gallons of motor oil a year in its support fleet, the additional cost

and a motor oil designed for diesel engines.

Last week, Central Vermont Public Service of Rutland, the public utility for much of the state of Vermont, began mandating a small-engine grade of the oil for use by its forestry division, where employees and contractors use chain saws and lawn mowers to clear and maintain power line corridors.

Individuals can also buy the biodegradable oil for their cars, though it is currently only available at a few locations.

Bowden said Green Planet Products motor oils are available Auto Zone and Pep Boys stores, or they can be purchased on Amazon.com.

Reach Gazette reporter Stephen Williams at 885-6705 or [swilliams@dailygazette.net](mailto:swilliams@dailygazette.net).

## CVPS switches to biodegradable chainsaw oil

Published May 14, 2010

Adding to a long list of environmental firsts, Central Vermont Public Service will become the first utility in the country to abandon traditional fossil-fuel chainsaw bar and chain oil, removing thousands of gallons annually from Vermont's environment.



"Every drop of bar and chain oil ends up in the fields and forests," CVPS spokesman Steve Costello said. "We'll be taking the equivalent of a thousand five-gallon pails of oil out of the environment every year. This decision will pay big dividends for Vermont plants, birds, animals and amphibians."

Starting June 1, dozens of CVPS-contracted tree-trimming crews will be required to use a new biodegradable chain and bar oil made from animal fat. The product, GreenOil, is produced by Green Earth Technologies, which has developed a series of new oils as alternatives to fossil fuels. CVPS uses seven different tree companies and typically has up to 55 tree crews working statewide at any given time.

Between 1,200 and 1,400 miles of distribution and transmission lines are cleared per year. Bar oil is automatically fed from a chainsaw to lubricate the chain, but it ultimately flies off into the environment. The new oil will begin to break down almost immediately in the environment, as bacteria feed on the natural animal product.

"Petroleum-based chain oil takes years to break down," CVPS Forestry Manager Duane Dickinson said. "GreenOil, the product we will use, will break down in a matter of days, and there is no chance of contamination of water sources or the food chain."

The new oil will cost a little more than regular oil, but Dickinson said it was worth a couple of extra dollars per gallon. "In the grand scheme of things, the minor added cost is worth protecting the lands and waters of the state Vermont," Dickinson said. "Our forestry program is designed to not only maintain reliable electrical service but to do it in environmentally responsible ways."

"Our Forestry Vegetation Management Plan includes constantly looking at new technologies and techniques to minimize environmental impacts," Dickinson said. "This new product does exactly that. It fits our goals to protect the environment of Vermont and reduce dependency on petroleum products."

CVPS was the first utility in the world to feed wind power onto the electric grid; the first in New England to operate a hybrid-electric bucket truck; and the first in the world to offer customers fully renewable energy generated from cow manure through CVPS Cow Power™.

CVPS's Forestry Department has earned numerous awards and honors over the years. CVPS has won the National Arbor Day Foundation Tree Line USA Award every year since 2003. It won the 2005 National Wild Turkey Federation National Land Stewardship Award and the 2003 Vermont Governor's Award for Environmental Excellence in Environmental Stewardship & Resource Protection. CVPS is also a charter member of the National Wild Turkey Federation Energy to Wildlife Program.

Green Planet Products LLC of Schenectady, N.Y., is the East Coast Distributor for Green Earth Technologies.

**Contact: Steve Costello: (802) 747-5427 work (802) 742-3062 pager**  
**For Immediate Release: May 14, 2010**

# County moves to oil alternative

**Fuel made from  
beef tallow to power  
Schenectady fleet**

By SEAN AHERN  
[aherns@spotlightnews.com](mailto:aherns@spotlightnews.com)

Schenectady County plans to use biodegradable motor oil in county vehicles to test the overall effectiveness of biofuels.

Chairwoman of the Schenectady County Legislature Susan Savage, D-Niskayuna, announced the plan at the League of Conservation Voters Eco-Breakfast on Monday, Dec. 14.

The event also honored Savage with the Environmental Champion Award for her environmental efforts.

"I think that this is a very interesting initiative and to be the first in the state to test this 100 percent biodegradable motor oil," said Savage. "Today, many initiatives with state implications start at the county level. We're happy to see how this will work with our fleet, environmentally and financially."

With the help of Green Planet Products LLC, an affiliate of the Galsei Group, Schenectady County will be the first municipality in New York to begin testing 100 percent biodegradable motor oil made from excess animal fat. The county will use the fuel in fleet vehicles including police and maintenance vehicles, according to Savage.

"This shows that Schenectady County is at the forefront of using green products and being environmentally conscious," said Chief Operation Officer of the Galsei Group and Director of Green Planet Products David Buicko. "It's extremely exciting to see Schenectady County get involved in the first place."

***We're happy to see how  
this will work with our  
fleet, environmentally  
and financially."***

— Susan Savage, D-Niskayuna

According to Buicko, the biodegradable motor oil has tested higher than other synthetic oils, including Mobil 1, and has a lower cloud point, or viscosity at lower temperatures, than other oils. Buicko also stated that the animal fat is made of beef tallow, which will help reduce the carbon footprint exponentially.

Green Planet Products, LLC will provide the motor oil to Schenectady County for its test program at no cost to the taxpayers, according to a press release. The products are manufactured at Green Earth Technologies, Inc. in Stamford, Conn.

"We must reduce our dependence on imported oil and replace it with products made in the United States that are environmentally friendly as oil leaks and spills are a leading cause of pollution," said Savage in a press release. "This new initiative continues our efforts to provide a better, more efficient government to taxpayers while also protecting the environment our children will inherit."

Savage has also worked to make Schenectady County a leader in renewable energy with purchases of Energy Star products, adopting LEED standards for all new construction county facilities and promoting home energy audits in partnership with NYSERDA.

## Pretty slick

We at *The Spotlight* usually ask our politicians to be less oily, but we feel Schenectady County is setting an example by being the first municipality in the state to allow its fleet of vehicles to test biodegradable motor oil.

Schenectady County Legislature Chairwoman Susan Savage made the announcement at the League of Conservation Voters Eco-Breakfast on Monday, Dec. 14.

### Editorial

We know there is no such thing as altruism in politics, so we're sure there is a great deal of money to be made by the oil's manufacturer, Green Earth Technologies, Inc. in Stamford, Conn., and no doubt by the supplier, Green Planet Products LLC, an affiliate of the Galesi Group. But, for the test at least, Green Planet Products will provide the motor oil to Schenectady County at no cost to the taxpayers. The county will use the fuel in their fleet, including police and maintenance vehicles, according to Savage.

In this day and age, anything the taxpayers can get at no cost should be considered wonderful.

For those of us not up on our green-tech speak, biodegradable motor oil is made from excess animal fat, usually beef tallow at a rate — according to the manufacturer, mind you — of 110 quarts per cow. Not bad for what most of us would consider hamburger waste.

The manufacturer also says — and so we should take this with a hefty grain of salt — that the bio-oil allows the operation of vehicles for up to 10,000 miles between oil changes, instead of the recommended 3,000 miles. They also say vehicle emissions will be reduced by up to 75 percent with the use of their product.

We at *The Spotlight* suppose Schenectady County's test of the bio-oil will see if these claims bear out or not, and we'll be sure to tell you one way or the other.

What we do know now, however is that this is a step in the right direction for municipalities in the Capital District and that Green Earth Technologies is no slouch in the field of biodegradable, fat-based motor oil. Earlier this year, the company's G-Oil SAE 5W-30 was the first bio-based motor oil to win the American Petroleum Institute's certification and was used by Home Depot even before earning that certification.

In this case, being a slick politician isn't all that bad.

SAVE THE EARTH  
SACRIFICE NOTHING



**GREEN  
PLANET**  
PRODUCTS, LLC

[www.greenplanetproductsllc.com](http://www.greenplanetproductsllc.com)

*S. Lee Bowden • 695 Rotterdam Ind'l Park, Schenectady, NY 12306 • 518-356-4445  
The Northeast Distributor for Green Earth Technologies Inc.*



**GREEN EARTH  
TECHNOLOGIES**

SUPERIOR PERFORMANCE  
ULTIMATE BIODEGRADABLE



**GROWN AND  
MADE IN THE USA**





WE'RE NOT ASKING YOU TO CHANGE THE  
WORLD, ONLY TO CHANGE YOUR OIL

It's time we took Einstein's advice. We can't solve our current problems with the old thinking that caused them in the first place.

We can't solve the current energy crisis unless we find a better solution than oil.

So we did just that. We applied new thinking to create motor oil that outperforms even the most expensive synthetics. The thing is, it's not oil. It's excess animal fat, yes fat. It doesn't come from some far away country. It has no harsh effects on the environment. And you don't have to give up performance to use it. It's simply a better product; runs better, smoother and longer. Not to mention you can pour it right on to the grass in your front lawn and it won't harm a thing.

Our oil is already shaking up the industry. And we're not done shaking things up. We're just getting started. We've added a whole line of environmentally friendly automotive cleaning products made from plants. These appearance products outperform and outshine the competition by blending nature with nanotechnology.

Environmentally safe, biodegradable high performance motor oil made from domestically collected animal fats? Cleaners made from

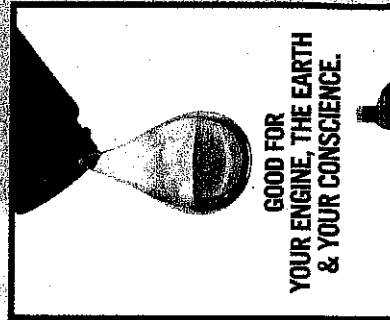
G-BRANDS are patent  
ULTIMATE BIODEGRADABLE\*  
are made with American grown and  
the power of nanotechnology to provide  
superior "environment safe" performance.

## American Grown Animal Base Oils

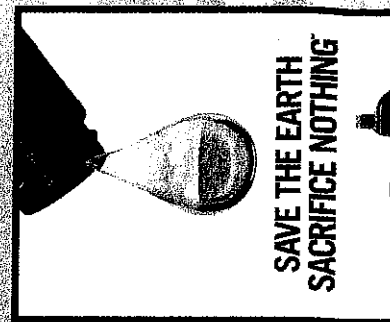
G-OIL provides superior performance during the maximum oil change interval recommended by vehicle manufacturers while meeting the requirements of the American Petroleum Institute (API) SM and previous API gasoline engine standards.



G-Oil Outdoor Small Engine Oils are formulated to meet the SM performance requirements of the American Petroleum Institute (API) for 4 Cycle air-cooled engines as well as JASO FD and API TC for 2 Cycle air-cooled engines.



GOOD FOR  
YOUR ENGINE, THE EARTH  
& YOUR CONSCIENCE.



SAVE THE EARTH  
SACRIFICE NOTHING

## Totally Green

Green Earth Technologies is a "totally green" clean tech company that combines renewable sourced feed stocks with proprietary technologies molded around the four ideologies of being GREEN:

Biodegradable • Renewable • Recyclable • Environment Safe

### Biodegradable

There are several levels of biodegradability as determined by ASTM with "Ultimate Biodegradable" as the highest ranking standard (2.1 ASTM D-5864) that states 60% of a product must degrade within 28 days.

GET-Products degrade from 70% to 95% within 9 days.

### Renewable



GROWN AND MADE IN THE USA

GET-Products replace the petrochemical base of traditional appearance and performance chemicals with an Ultimate Biodegradable bio base made with plants or animal fat. It is sustainable and can be collected domestically with grown beef, pork, chicken fat and plant oils.



### Recyclable



GET-Products are made from renewable resources and are 100% recyclable. They are designed to be recycled with other plastics and are not mixed with other plastics. They are made from a single material and are 100% recyclable. They are made from a single material and are 100% recyclable.

### Environment Safe

#### HAZARD RATING

4 - Extreme

Fire

3 - High

0

HAZARD RATING

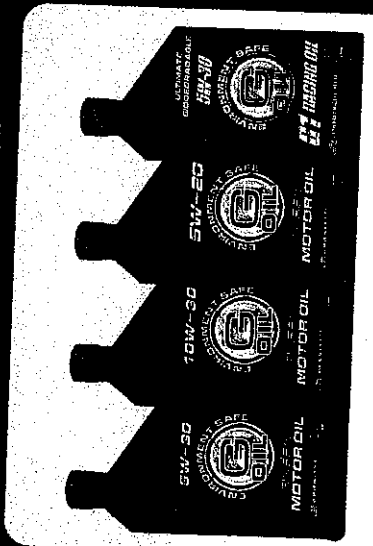
## ABOUT GREEN EARTH TECHNOLOGIES

Green Earth Technologies produces "G"-branded superior performing totally green products made with American grown base oils that utilize the power of nanotechnology to deliver environmentally friendly products with no compromise...meaning, consumer can now "do their part" without having to give up performance or value; Save the Earth - Sacrifice Nothing™. The G-Brand family of products include G-OIL™, G-LUBE™, G-WASH™, G-GLASS™, G-WHEEL™, G-PROTECT™, G-TIRE™, G-CLEAN™ and G-SCENT™, which are now available in various automotive categories in a variety of retailers coast to coast and internationally. Please visit [www.getg.com](http://www.getg.com) for the latest news and in-depth information about G.E.T. and its brands.

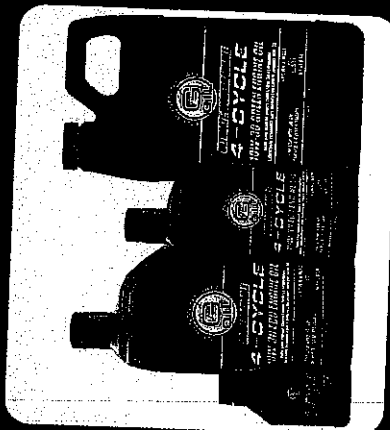
G-OIL 2 Cycle Outdoor



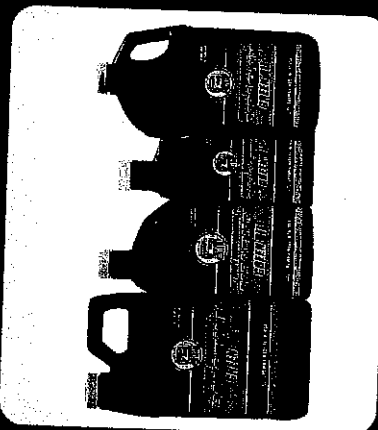
G-OIL Green Motor Oil



G-OIL 4 Cycle Outdoor



G-OIL Bar & Chain



G-CLEAN Pressure Washer Products

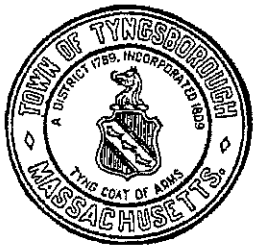


G-OIL OPE Oil



G-BRAND Appearance Products





## TOWN OF TYNGSBOROUGH

Office of the Town Administrator

25 Bryants Lane

Tyngsborough, MA 01879

Tel: 978 649-2300 Ext. 100 Fax: 978 649-2320

E-mail: [mgilleberto@tyngsboroughma.gov](mailto:mgilleberto@tyngsboroughma.gov)

TO: Joanne Shifres, Town Clerk

FROM: Michael P. Gilleberto, Town Administrator

MP

DATE: July 27, 2010

RE: September 14, 2010 Capital Exclusion Election

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At their meeting of July 26, 2010, the Board of Selectmen voted to set a Capital Exclusion election pursuant to the approved Article 6 of the Annual Town Meeting of May 18, 2010. The Selectmen voted that the Town conduct the election on Tuesday, September 14, 2010.

The Capital Exclusion question to be posed at the election is as follows:

**Shall the Town of Tyngsborough be allowed to assess an additional \$780,000 in real estate and personal property taxes for the purposes of funding the following capital appropriations: Fire Command Car (\$40,000), Highway Dump Truck (\$130,000), Highway Wash Station Completion (\$100,000), School Technology Plan (\$100,000), School Paving (\$80,000), Middle School Bleachers (\$80,000), High School Pierce Bleachers (\$125,000), Town Technology (\$25,000) and Town Road Plan (\$100,000) for the fiscal year beginning July first two thousand and ten?**

Yes \_\_\_\_\_

No \_\_\_\_\_

Please do not hesitate to contact me if you have additional questions or concerns.

cc: Board of Selectmen  
School Committee  
Strategic Financial Planning Committee  
Capital Asset Management Committee



Massachusetts  
Municipal  
Association



Constellation  
NewEnergy



MunEnergy

A Service of the Massachusetts Municipal Association

2010 JUL 16 10:10 AM

BOARD OF SELECTMEN  
TYNGSBOROUGH, MA.

July 15, 2010

Michael Gilleberto  
Town of Tyngsborough  
25 Bryants Lane  
Tyngsborough, MA 01879

Dear Michael:

As the energy decision-maker for your municipality, you may understand the impact of electricity price volatility on your bottom line. MunEnergy, the Massachusetts Municipal Association's energy program, is working to educate municipal leaders about the basics of electricity pricing and to provide you with tools that may help you manage these costs.

MunEnergy is sponsoring three FREE breakfast seminars to help you understand how you might better manage your energy costs. Experts from Constellation NewEnergy, Inc., the MMA's endorsed supplier to the MunEnergy program, will discuss the basics of electricity pricing, how to stabilize electricity costs, and how you may save money by reducing electricity usage.

Join us at one of the following MunEnergy seminars to learn about managing electricity costs:

- Tuesday, August 3rd  
Foxborough Public Safety Building
- Tuesday, August 10th  
Danvers Town Hall
- Thursday, August 12th  
Holyoke Community College

To register, simply fill out the form on the back of this letter and fax it back to me at 443-213-3396. If you have any questions – or are unable to attend and would like to learn more – feel free to contact me at 617-772-7513 or [emily.neill@constellation.com](mailto:emily.neill@constellation.com).

Sincerely,

*Emily A. Neill*

Vice President of Sales  
Constellation Energy

As the seasons change, so do your energy bills.



Join us at a MunEnergy Breakfast Seminar and learn how to manage your energy budget in all seasons.



Name \_\_\_\_\_ Title \_\_\_\_\_

Municipality \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Email Address (required) \_\_\_\_\_

Please check off which seminar you would like to attend:

☐ Tuesday, August 3rd  
8am - 10am

Foxborough Public Safety Building  
8 Chestnut Street  
Foxborough, MA

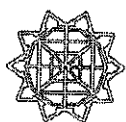
☐ Tuesday, August 10th  
8am - 10am

Danvers Town Hall  
1 Sylvan Street  
Danvers, MA

☐ Thursday, August 12th  
8am - 10am

Holyoke Community College  
303 Homestead Avenue  
Holyoke, MA

Please RSVP today by faxing back the completed form to 443-213-3396.



Massachusetts  
Municipal  
Association



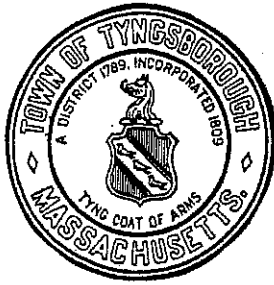
Constellation  
NewEnergy



MunEnergy

A Service of the Massachusetts Municipal Association





## Town of Tyngsborough Building Department

25 Bryants Lane  
Tyngsborough, Massachusetts 01879  
Office: (978) 649-2300 Ext. 112

2010 JUL 30 PM 12:25  
TOWN OF TYNGSBOROUGH, MA.

July 30, 2010

Philippe Thibault Architect  
45 Peabody Avenue  
Dracut, MA 01826

RE: Michael's Pub  
147 Frost Road  
Tyngsborough, MA 01879

Dear Mr. Thibault,

In response to your July 23, 2010 Occupancy Load Certification (copy attached) regarding the above mentioned, I offer the following:

1. Required illuminated "Exit" signs are still missing above egress doors.
2. Required "Panic Bars" are still not installed on egress doors.
3. The "patio" area is set up with numerous tables and chairs which would change allowances from concentrated use of 5' (five feet) to an un-concentrated use of 15' (fifteen feet) net per person.

Please see 780 CMR - Table 1004.1.2

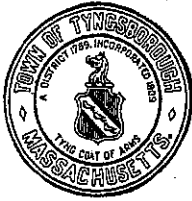
As per these issues, I do not accept your Occupancy Load Certification. You may recalculate the loads and resubmit. Thank you.

Respectfully,

Mark E. Dupell  
Building Commissioner

cc: **Board of Selectmen**

Town Administrator, Michael P. Gilleberto  
Fire Department, Chief Madden / Captain Sands  
Attorney Charles Zaroulis, 40 Church Street, Suite 500, Lowell, MA 01852  
Donato DiRocco & Donald Lamoureux, 5 French Drive, Bedford, NH 03110  
Michael's Pub, c/o Manager, 147 Frost Road, Tyngsborough, MA 01879  
File: #09-044



# Town of Tyngsborough

## Planning Board

25 Bryants Lane  
Tyngsborough, Massachusetts 01879-1003  
Office: (978) 649-2300, ext. 115  
Fax: (978) 649-2301

### AGENDA

August 5, 2010  
Meeting Room 1  
7:00pm

*Revised  
7/30/10*

2010 JUL 30 PM 12:25  
TOWN OF TYNGSBOROUGH, MA

### Open Meeting

1. 41 Phalanx St. - Temporary Independent Living Quarters (T.I.L.Q.) Special Permit Application

### DISCUSSION

Planning Board representative to the Community Preservation Committee (CPC)

Planning Board representative to the TECC Study Committee

Planning Board representative to the Energy & Environmental Affairs Committee

### ENGINEER REPORTS

### ADMINISTRATIVE

1. Approval of Minutes: July 15, 2010
2. Sign Bills & Forms
3. New Business